

September 19, 2025

Improving Access to Justice Through Recognition & Enforcement of Tribal Court Orders

Conference Materials



Judicial Council of California

Tribal Court–State Court Forum

September 19, 2025
Improving Access to Justice Through Recognition &
Enforcement of Tribal Court Orders

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Setting the Stage: Overview of Trial/State Legal Jurisdiction Landscape and Issues in California

Hon. Abby Abinanti, Chief Judge of the Yurok Tribal Court and Cochair of the Tribal Court–State Court Forum

Hon. Joyce D. Hinrichs (Ret.), Judge of the Superior Court of California and outgoing Cochair of the Tribal Court–State Court Forum

Hon. Shama Hakim Mesiwala, Associate Justice of the Court of Appeal, Third District, and incoming Cochair of the Tribal Court–State Court Forum

Ann Gilmour, Attorney, Judicial Council of California

Overview of Issues of Enforcement of Tribal Court Orders in California

September 19, 2025

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California Tribal Communities Today

109 Federally Recognized tribes ranging in size from Yurok with over 5,000 members to tribes with just several families.

70 or more other groups that do not have federal recognition. Among them are descendants of groups that signed the 18 unratified treaties and groups that were terminated and not restored.

Very few California tribes able to meet the requirements for federal acknowledgment. List whittled down.

Some terminated tribes recognized by legislative action.

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Percent American Indian and Alaska Native Alone or in Combination,
Total Population by County: 2020

California: 3.6%



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California Native American Community today

- Many are affiliated with out of state tribes as a result of federal assimilation policies;
- High population of Cherokee and Alaska Natives in urban centers in California;

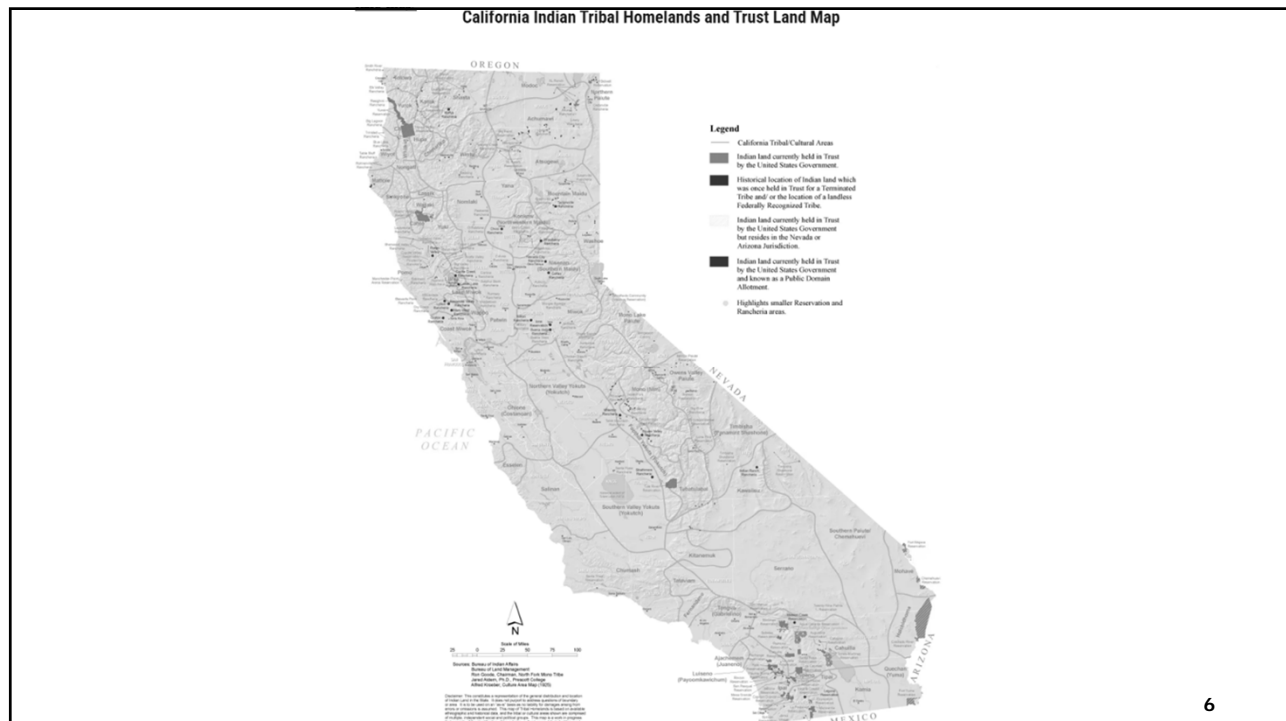
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California Indian Country

18 U.S.C. § 1151

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any 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.

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Jurisdictional landscape in Indian Country:

- Starting point –
 - Each tribe is a separate sovereign with inherent, exclusive and plenary authority over their territory and their members;
 - Jurisdiction over non-Indians is murkier;
 - Tribes are under the exclusive and plenary jurisdiction of congress which, subject to the federal trust obligation, may restrict or abolish tribal jurisdiction and even sovereignty.

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Jurisdictional landscape

- Federal government can and has altered jurisdictional scheme
- Big one in CA – Public Law 280

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Jurisdiction in Indian Country

- 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.

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Public Law 280

- Enacted in 1953
- Codified at 28 USC § 1360; 18 USC § 1162
- Grants California criminal jurisdiction in Indian Country concurrent with tribes
- Also grants limited civil jurisdiction:
 - Civil adjudicatory, *Bryan v. Itasca County*, 426 U.S. 373 (1976)
 - Not civil regulatory and
 - Opens CA courts as a forum to resolve disputes

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Criminal Jurisdiction on in Indian Country

**Before
1953**

Federal Jurisdiction Included:

- Federal and state defined offenses committed by Indian v. non-Indian and vice versa
- Specified major crimes by and against Indians
- Crimes related to federal trust responsibility
 - Liquor, hunting and fishing regulation regardless of Indian status

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Jurisdiction on in Indian Country

**Before
1953
(cont.)**

• Tribal Jurisdiction:

- Exclusive as to all other crimes committed between Indians or without victims

The Indian Civil Rights Act of 1968:

- Limited tribal authority to punish crimes with imprisonment of up to one year

• State Jurisdiction:

- Exclusive as to crimes between non-Indians

Following the enactment of PL-280, the federal government withdrew funding for tribal justice systems in California.

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Public Law 280

- Federal government withdrew federal funding for tribal justice systems in California, including courts;
- Did not provide funding to the State for assuming responsibility for administration of justice in California Indian Country;
- Much written about the detrimental effects of PL-280 on safety and access to justice in Indian Country in California and other PL-280 states.

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Country- After PL-280

Offender	Victim	Jurisdiction
Non-Indian	Non-Indian	State: exclusive
Non-Indian	Indian	State: exclusive (except VAWA)
Indian	Non-Indian	Concurrent State and tribal jurisdiction, exclusive of federal government
Indian	Indian	Concurrent State and tribal jurisdiction, exclusive of federal government
Non-Indian	Victimless	State: exclusive
Indian	Victimless	Concurrent State and tribal jurisdiction, exclusive of federal government

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Public Law 280

- In 2023, Senators Murkowski of Alaska, Padilla of California & other representatives asked the GAO for a study of the impacts of PL-280 & GAO agreed;
- Phase one of the study looking at Alaska, is underway, study on other states will begin soon.

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PL-280

- In consultations held in 2024, Federal Government estimated costs of providing fully for justice needs of tribes in PL-280 states.

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Bureau of Indian Affairs



Office of Justice Services

2021 TLOA Report - Summary

The BIA has prepared a *Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country* report for each annual appropriation since fiscal year 2010.

The latest report (for FY 2021 funding) estimates that an additional \$3.1 billion and 25,655 public safety personnel are required to adequately serve Indian Country each year. PL-280 needs are included.

Table 4. Summary of Total Estimated Tribal PS&J Program Costs

State	Number of Tribes	Total Estimated Indian Service Population	Annual Program FTE & Cost Estimate (Dollars in Thousands)					
			Law Enforcement		Detention/Corrections (Existing Programs Only)		Tribal Courts	
			FTE	(\$000)	FTE	(\$000)	FTE	(\$000)
Non-P.L. 280 States:								
Totals – Non-P.L. 280 States	213	2,222,982	9,405	1,200,900	2,498	273,074	9,084	1,029,324
P.L. 280 States:								
Totals – P.L. 280 States	367	442,434	4,235	523,445	112	11,082	4,102	471,571
All States								
Grand Totals – All States	580	2,665,416	13,640	1,724,345	2,610	284,157	13,186	1,500,895

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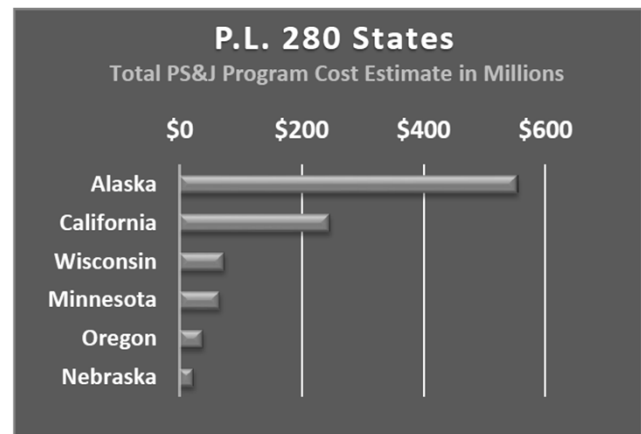
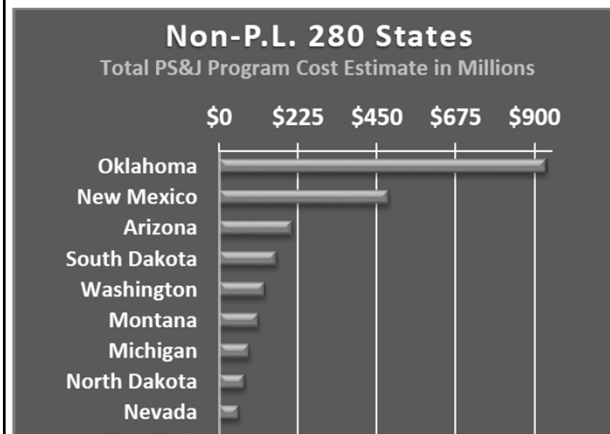
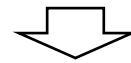
Bureau of Indian Affairs



Office of Justice Services

2021 TLOA Report – Need Estimates

Because the need estimates for **Law Enforcement** programs and **Tribal Courts** are calculated from service population data, we can estimate needs for all 574 Federally recognized tribes (including those in P.L. 280 States).



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Jurisdictional landscape

- Court decisions have also affected degree of jurisdiction tribes can exercise particularly over non-Indians;
- This continues to evolve;

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Tribal Justice Systems in California

At least 32 tribal courts in California some are consortium courts serving multiple tribes. <https://courts.ca.gov/programs-initiatives/tribalstate-programs/tribal-justice-systems/california-tribal-courts-directory>

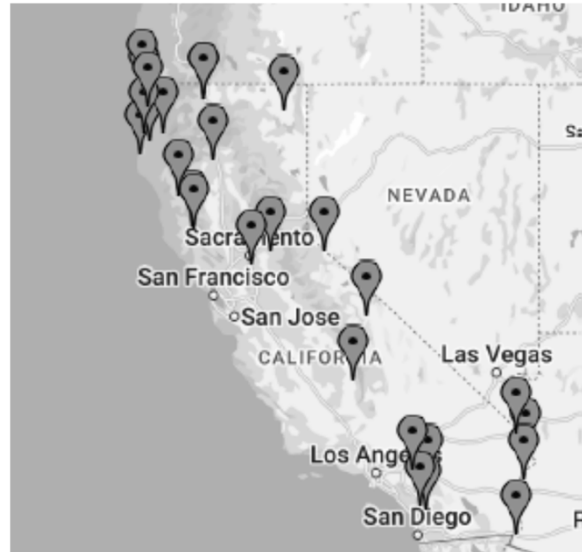
At least 26 tribal law enforcement agencies. <https://www.calindian.org/tribal-law-enforcement/>

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California Tribal Courts Directory

Bear River Band of the Rohnerville Rancheria Tribal (Humboldt County)	Northern California Tribal Courts Coalition
Bishop Paiute Tribal Court (Inyo County)	Pala Tribal Court (San Diego County)
Blue Lake Rancheria Tribal Court (Humboldt County)	Quechan Tribal Court (Imperial County)
Cedarville Rancheria Tribal Court (Modoc County)	Redding Rancheria Tribal Court (Shasta County)
Chemehuevi Indian Tribal Court (San Bernardino County)	Robinson Rancheria Tribal Court (Lake County)
Colorado River Indian Tribes (CRIT) Tribal Court (San Bernardino County)	Round Valley Indian Tribes Tribal Court (Mendocino County)
Elk Valley Tribal Court (Modoc County)	San Manuel Tribal Court (San Bernardino County)
Fort Mohave Tribal Court (San Bernardino County)	Shingle Springs Rancheria Tribal Court (El Dorado County)
Hoop Valley Tribal Court (Humboldt County)	Tolowa Dee-ni' Nation (Del Norte County)
Inter-Tribal Court of Southern California (Serving tribes in Madera, Mendocino, Riverside, San Diego, and Tuolumne Counties)	Trinidad Rancheria Tribal Court (Humboldt County)
Karuk Tribal Court (Siskiyou County)	Tule River Tribal Court (Tulare County)
Morongo Tribal Court (Riverside County)	Washoe Tribal Court (Alpine County)
Northern California Intertribal Court System (Mendocino County)	Wilton Rancheria Tribal Court (Sacramento County)
	Yurok Tribal Court (Del Norte and Humboldt Counties)



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Benefits of Tribal Justice Systems in California

Culturally appropriate;

Trauma informed;

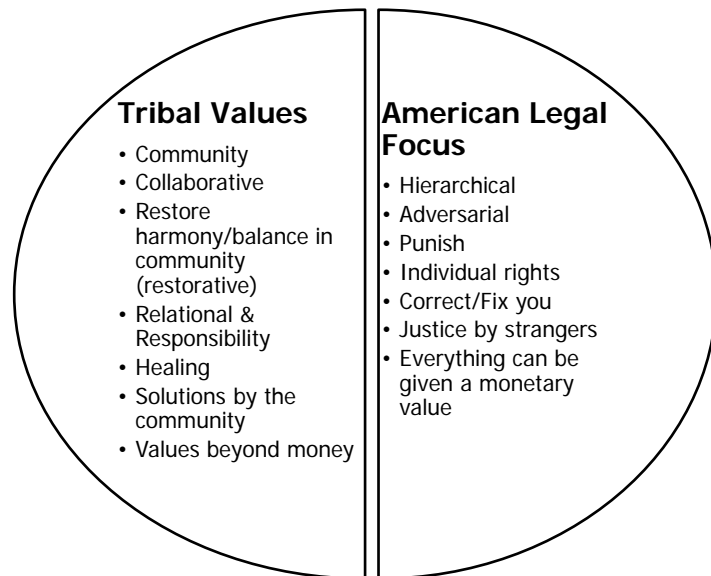
Local and community based;

Improved outcomes.

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Tribal & Typical American Approaches?



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Tribal State Court Collaborations



- Joint-Jurisdiction Courts/Family Healing to Wellness Courts
 - Can involve Student Attendance Review Boards (SARB) –interrupt the school to prison pipeline
- Tribal Healing to Wellness Courts as partners and diversion
- Adult criminal diversion

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Recognition & enforcement of orders

- Tribal Court orders do not need state recognition to be valid
- Court orders are only useful if they are enforceable;
- Enforcement of tribal court orders often depends on state recognition;
- Status of tribal court orders not always clear;
- Not “sister states”, but not really “foreign” either

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Recognition & enforcement of orders

- Some federal and state laws mandate full faith and credit:
 - Indian Child Welfare Act - 25 U.S.C. § 1911 (d)
 - Violence Against Women Act 18 U.S.C. § 2265; Family Code § 6400 et seq.
 - Child Support Enforcement Act 28 U.S.C. 1738 B
 - Uniform Child Custody Jurisdiction and Enforcement Act Family Code §3404
 - Tribal Court Civil Money Judgment Act – Code of Civil Procedure § 1730 et seq.

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Recognition & enforcement of orders

- Where no statute – general rule is comity (*Wilson v. Marchington*, 127 F.3d 805 (1997)) – presumption of yes, not no!
- Tribal courts want to know that they are actually serving their communities

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Basic approach & value

- Robust tribal justice systems enhance public safety and access to justice;
- Jurisdictional confusion & questions about whether tribal court orders will be recognized and enforced undermine these goals;
- Support for cross-jurisdictional collaboration both at statewide and local level.

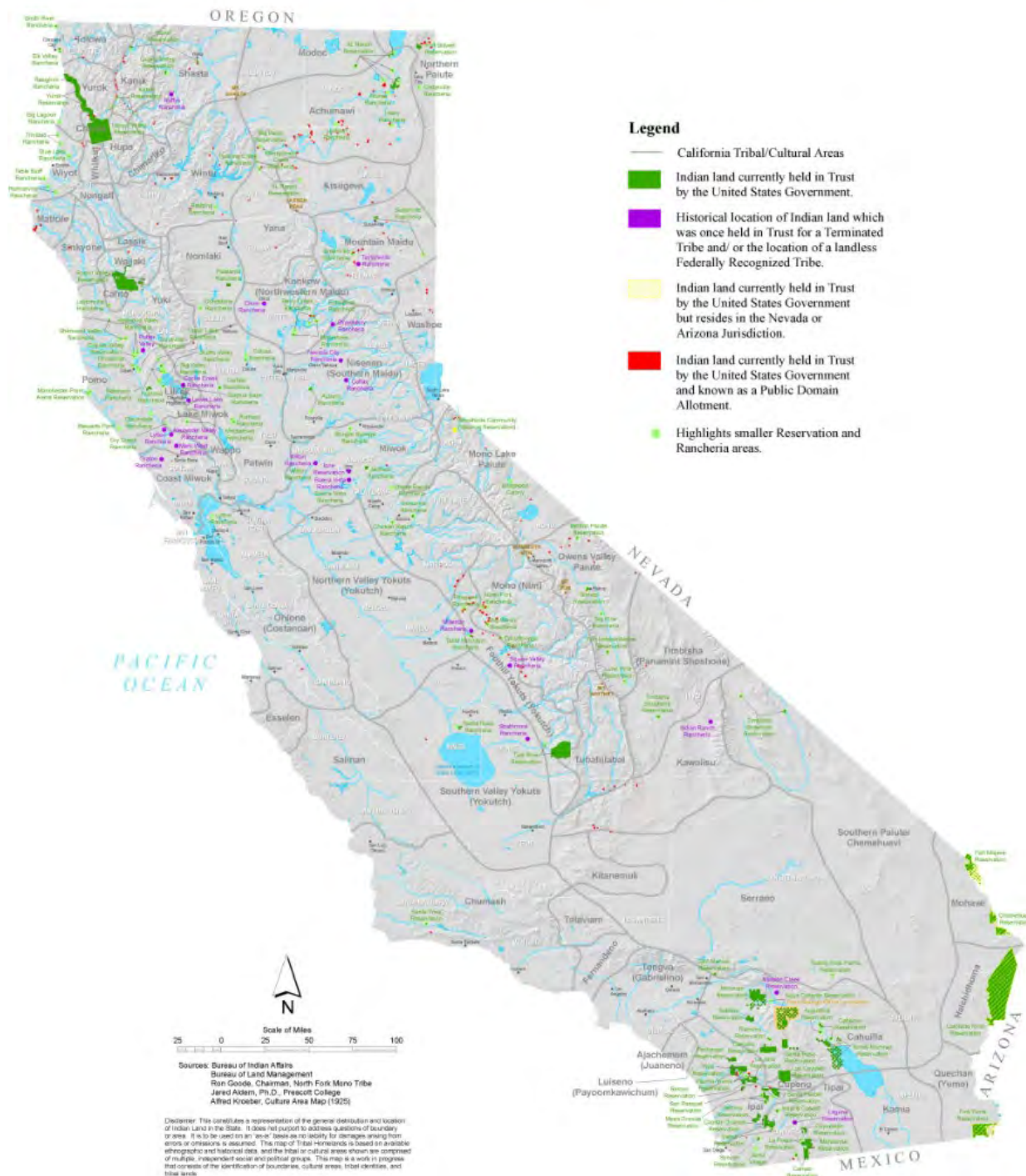
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Goals for today

- Ask for your assistance in solving ongoing issues with recognition and enforcement of tribal court orders in various case types;
- Learn from you your experiences on the ground;
- Assist us in setting priorities for our ongoing work.

California Trust Lands Map: <https://mavensnotebook.com/2019/05/15/california-water-policy-conference-tribal-groundwater-rights-and-sigma-a-new-underlying-tension/california-indian-tribal-homelands-and-trust-land-map/>

California Indian Tribal Homelands and Trust Land Map



California Counties with Federally Recognized Tribes:

[There are 109 Tribal Nations in 34 counties in the State of California.](#)

- **Alpine**
 - Washoe Tribe of CA and NV
- **Amador**
 - Buena Vista Rancheria of Mi-Wuk Indians
 - Lone Band of Miwok Indians of California
 - Jackson band of of Mi-Wuk Indians
- **Butte**
 - Tyme Maidu Tribe- Berry Creek Reservation
 - Enterprise Rancheria
 - Mechoopda Indian Tribe
 - Mooretown Rancheria
- **Colusa**
 - Cachil DeHe Band of Wintun Indians of the Colusa Indian Community
 - Cortina Rancheria
- **Del Norte**
 - Elk Valley Rancheria
 - Resighini Rancheria
 - Tolowa Dee-ni Nation
 - Yurok Tribe of California
- **El Dorado**
 - Shingle Springs Band of Miwok Indians
- **Fresno**
 - Big Sandy Rancheria
 - Cold Springs Rancheria
 - Table Mountain Rancheria
- **Glenn**
 - Grindstone Indian Rancheria
- **Humboldt**
 - Bear River Band of the Rohnerville Rancheria
 - Big Lagoon Rancheria
 - Blue Lake Rancheria
 - Trinidad Rancheria
 - Hoopa Valley Tribe
 - Table Bluff Reservation
- **Imperial**
 - Quechan Indian Tribe
- **Inyo**
 - Big Pine Paiute Tribe of the Owens Valley
 - Bishop Tribe
 - Timbi-Sha Shoshone Tribe
 - Fort Independence Community of Paiute
 - Lone Pine
- **Kern**
 - Tejon Indian Tribe

- **Kings**
 - Tachi-Yokut Tribe
- **Lake**
 - Big Valley Band Rancheria
 - Elem Indian Colony
 - Habematolel Pomo of Upper Lake
 - Middletown Rancheria of Pomo Indians
 - Robinson Rancheria
 - Scotts Valley Reservation
- **Lassen**
 - Susanville Indian Rancheria
- **Madera**
 - North Fork Rancheria
 - Picayune Rancheria of Chukchansi Indians
- **Mendocino**
 - Cahto Tribe
 - Coyote Valley Band of Pomo Indians
 - Guidiville Indian Rancheria
 - Hopland Band of Pomo Indians
 - Manchester Band of Pomo Indians
 - Pinoleville Pomo Nation
 - Potter Valley Tribe
 - Redwood Valley Little River Band of Rancheria of Pomo
 - Round Valley Reservation
 - Sherwood Valley Rancheria
- **Modoc**
 - Alturas Rancheria
 - Cedarville Rancheria
 - Fort Bidwell Reservation
- **Mono**
 - Bridgeport Indian Colony
 - Benton Paiute Reservation
- **Placer**
 - United Auburn Indian Community
- **Plumas**
 - Greenville Rancheria
- **Riverside**
 - Agua Caliente Band of Cahuilla Indians
 - Augustine Band of Mission Indians
 - Cabazon Band of Mission Indians
 - Cahuilla Band of Indians
 - Morongo Band of Mission Indians
 - Pechanga Band of Luiseño Indians
 - Ramona Band of Cahuilla Mission Indians
 - Santa Rosa Band of Cahuilla Indians
 - Soboba Band of Luiseno Indians
 - Torres-Martinez Desert Cahuilla Indians
 - Twenty-Nine Palms Band of Mission Indians

- **Sacramento**
 - Wilton Rancheria
- **San Bernardino**
 - Chemehuevi Indian Tribe
 - Colorado River Indian Tribe
 - Fort Mojave
 - San Manuel Band of Mission Indians
- **San Diego**
 - Barona Band of Mission Indians
 - Campo Band of Kumeyaay Indians
 - Ewiiapaayp Band of Kumeyaay Indians
 - Santa Ysabel Band of Diegueno Indians
 - Inaja-Cosmit Band of Mission Indians
 - Jamul Indian Village
 - La Jolla Indian Reservation
 - La Posta Band of Mission Indians
 - Los Coyotes Band of Mission Indians
 - Manzanita Band of Kumeyaay Nation
 - Mesa Grande Band of Mission Indians
 - Pala Band of Mission Indians
 - Pauma Band of Mission Indians
 - Rincon Band of Luiseno Indians
 - San Pasqual Band of Diegueno Mission Indians
 - Sycuan Band of the Kumeyaay Nation
 - Viejas Band of Kumeyaay Indians
- **San Joaquin**
 - California Valley Miwok Tribe
- **Santa Barbara**
 - Santa Ynez Band of Chumash Mission Indians
- **Shasta**
 - Pit River Tribe
 - Redding Rancheria
- **Siskiyou**
 - Karuk Tribe of California
 - Quartz Valley Reservation
- **Sonoma**
 - Cloverdale Rancheria of Pomo Indians of California
 - Dry Creek Rancheria of Pomo Indians
 - Federated Indians of Graton Rancheria
 - Kashia Band of Pomo Indians of the Stewart's Point Rancheria
 - Lower Lake Rancheria
 - Lytton Band of Pomo Indians
- **Tehama**
 - Paskenta Band of Nomlaki Indians
- **Tulare**
 - Tule River Indian Reservation
- **Tuolumne**
 - Chicken Ranch Rancheria of

- Tuolumne Band of Me-Wuk Indians
- **Yolo**
 - Yocha Dehe Wintun Nation

Unrecognized tribal entities on the list of entities maintained by the Native American Heritage Commission:

1. Amah Mutsun Tribal Band of Mission San Juan Bautista, 789 Canada Road, Woodside, CA 94062
2. Amah Mutsun Tribal Band, P. O. Box 5272, Galt, CA 95632
3. Barbareno/ Ventureno Band of Mission Indians, 365 North Poli Avenue, Ojai, CA 93023
4. Calaveras Band of Mi-Wuk Indians (Grimes) P. O. Box 899, West Point, CA 95255
5. Calaveras Band of Mi-Wuk Indians (Wilson), 546 Bald Mountain Road, West Point, CA 95255
6. Chumash Council of Bakersfield, 729 Texas Street, Bakersfield, CA 93307
7. Coastal Band of the Chumash Nation, 24 S. Voluntario Street, Santa Barbara, CA 93101
8. Colfax-Todds Valley Consolidated Tribe, P. O. Box 4884, Auburn, CA 95604
9. Costanoan Ohlone Rumsen-Mutsen Tribe, 644 Peartree Drive, Watsonville, CA 95076
10. Costanoan Rumsen Carmel Tribe, 244 E. First Street, Pomona, CA 91766
11. Death Valley Timbi-Sha Shoshone Tribe, P. O. Box 1779, Bishop, CA 93514
12. Dumna Wo-Wah Tribal Government, 2191 West Pico Avenue, Fresno, CA 93705
13. Dumna Wo-Wah Tribal Government, 2191 West Pico Avenue, Fresno, CA 93705
14. Dunlap Band of Mono Indians, P.O. Box 14, Dunlap, CA 93621
15. Esselen Tribe of Monterey County, P. O. Box 95, Carmel Valley, CA 93924
16. Esselen Tribe of Monterey County, P. O. Box 95, Carmel Valley, CA 93924
17. Fernandeano Tataviam Band of Mission Indians: Sovereign Indian Nation of Northern Los Angeles County, 1019 2nd Street, San Fernando, CA 91340, Tele: 818-837-0794, Fax: 818-837-0796, email: Administration@tataviam-nsn.us, Tribal website: www.tataviam-nsn.us, Tribal Atlas page: [Fernandeano Tataviam Band of Mission Indians](#)
18. Gabrieleno Band of Mission Indians – Kizh Nation, P. O. Box 393, Covina, CA 91723
19. Gabrieleno/Tongva San Gabriel Band of Mission Indians, P. O. Box 693, San Gabriel, CA 91778, Tribal website: <https://www.gabrieleno-nsn.us>, Tribal Atlas page: <https://nahc.ca.gov/cp/tribal-atlas-pages/gabrieleno-tongva-san-gabriel-band-of-mission-indians/>
20. Gabrielino Tongva Indians of California Tribal Council, P. O. Box 490, Bellflower, CA 90707
21. Gabrielino/Tongva Nation of the Greater Los Angeles Basin, 106 1/2 Judge John Aiso Street, #231 Los Angeles, CA 90012, Tribal Atlas page: <https://nahc.ca.gov/cp/gabrielino-tongva-nation/>
22. Gabrielino-Tongva Tribe, 23454 Vanowen Street, West Hills, CA 91307
23. Honey Lake Maidu (Garcia), 7029 Polvadero Drive, San Jose, CA
24. Honey Lake Maidu (Morales), 1101 Arnold Street, Susanville, CA 96130
25. Indian Canyon Mutsun Band of Costanoan, P. O. Box 28, Hollister, CA 95024
26. Juaneño Band of Mission Indians – Acjachemen Nation (Belardes), 32211 Los Amigos, San Juan Capistrano, California 92675
27. Juaneño Band of Mission Indians – Acjachemen Nation (Romero), 31411-A La Matanza Street San Juan Capistrano, CA 92675
28. Juaneño Band of Mission Indians, P. O. Box 25628, Santa Ana, CA 92799

29. Kern Valley Indian Community, P. O. Box 1010, Lake Isabella, CA 93283
30. Kings River Choinumni Farm Tribe, 3515 East Fedora Avenue, Fresno, CA 93726
31. Kitanemuk & Yowlumne Tejon Indians, 115 Radio Street, Bakersfield, CA 93305
32. Kitanemuk & Yowlumne Tejon Indians, 115 Radio Street, Bakersfield, CA 93305
33. Koi Nation of Northern California, P.O. Box 3162, Santa Rosa, CA 95402
34. KonKow Valley Band of Maidu, 2086 North Villa Street, Palermo, CA 95968
35. Kwaaymii Laguna Band of Mission Indians, P. O. Box 775, Pine Valley, CA 91962
36. Mishewal-Wappo Tribe of Alexander Valley, 2275 Silk Road, Windsor, CA 95492
37. Mono Lake Indian Community, P. O. Box 117, Big Pine, CA 93513
38. Muwekma Ohlone Indian Tribe of the San Francisco Bay Area, 20885 Redwood Road Suite 232, Castro Valley, CA 94546
39. Nashville-Enterprise Miwok-Maidu-Nishinam Tribe, P. O. Box 580986, Elk Grove, CA 95758-0017
40. Nisenan Tribe of the Nevada City Rancheria
41. Nor-Rel-Muk Nation, P. O. Box 1967, Weaverville, CA 96093
42. North Fork Mono Tribe, 13396 Tollhouse Road, Clovis, CA 93619
43. North Valley Yokuts Tribe, P. O. Box 717, Linden, CA 95236
44. North Valley Yokuts Tribe, P. O. Box 717, Linden, CA 95236
45. Northern Chumash Tribal Council, P. O. Box 6533, Los Osos, CA 93412
46. Noyo River Indian Community, P. O. Box 91, Fort Bragg, CA 95437
47. Ohlone/ Costanoan-Esselen Nation, P. O. Box 1301, Monterey, CA 93942
48. Ohlone/ Costanoan-Esselen Nation, P. O. Box 1301, Monterey, CA 93942
49. Pakan'yani Maidu of Strawberry Valley Rancheria, PO Box 1151, Marysville, CA 95901
Tribal website: <https://www.strawberryvalleymaidu.org/>
50. Salinan Tribe of Monterey, San Luis Obispo Counties, 7070 Morro Road, Suite A, Atascadero, CA 93422, Tribal website: <https://salinantribe.com>
51. San Fernando Band of Mission Indians, P. O. Box 221838, Newhall, CA 91322, Tribal website: <https://sfbmi.org>, Tribal Atlas page: [San Fernando Band of Mission Indians](#)
52. San Luis Obispo County Chumash Council, 1030 Ritchie Road, Grover Beach, CA 93433
53. San Luis Rey Band of Mission Indians, 1889 Sunset Drive, Vista, CA 92081
54. Serrano Nation of Mission Indians, P. O. Box 343, Patton, CA 92369
55. Shasta Indian Nation, 19349 Kinene Court, Redding, CA 96003
56. Shasta Nation, P. O. Box 1054, Yreka, CA 96097
57. Southern Sierra Miwuk Nation, P. O. Box 186, Mariposa, CA 95338
58. Strawberry Valley Rancheria, P. O. Box 667, Marysville, CA 95901
59. Tamien Nation, PO Box 8053, San Jose, CA 95155, info@tamien.org, Tribal website: <https://www.tamien.org>
60. The Ohlone Indian Tribe, P. O. Box 3388, Fremont, CA 94539
61. The Ohlone Indian Tribe, P. O. Box 3388, Fremont, CA 94539
62. The Ohlone Indian Tribe, P. O. Box 3388, Fremont, CA 94539
63. Traditional Choinumni Tribe, 2415 E. Houston Avenue, Fresno, CA 93720
64. Tsi Akim Maidu, P. O. Box 510, Browns Valley, CA 95918
65. Tsnungwe Council, P. O. Box 373, Salyer, CA 95563, Tribal website: <https://dannynammon.wixsite.com/website>, Tribal Atlas page: <https://nahc.ca.gov/cp/tsnungwe-council/>

66. Tubatulabals of Kern Valley, P. O. Box 226, Lake Isabella, CA 93240
67. Winnemem Wintu Tribe, 14840 Bear Mountain Road, Redding, CA 96003
68. Wintu Tribe of Northern California, P. O. Box 995, Shasta Lake, CA 96019
69. Wuksache Indian Tribe/ Eshom Valley Band, 1179 Rock Haven Court, Salinas, CA 93906
70. Wuksache Indian Tribe/ Eshom Valley Band, 1179 Rock Haven Court, Salinas, CA 93906
71. Xolon-Salinan Tribe, P. O. Box 7045, Spreckles, CA 93962
72. yak tityu tityu yak tihini – Northern Chumash Tribe, 660 Camino Del Rey, Arroyo Grande, CA 93420

Counties with “Indian Country” <https://nahc.ca.gov/cp/>

[Primer on the types of land in federal indian reservations for groundwater sustainability agencies](#)

BIA Pacific Regional Office “Who we are” <https://www.bia.gov/regional-offices/pacific/who-we-are>

EPA map of tribal trust lands: https://www3.epa.gov/region9/air/maps/pdfs/r9-california-tribal-lands-reservations-air1100040_3.pdf

Southern Sierra Miwuk Nation still waiting for recognition: <https://www.sfpublishpress.org/california-indian-tribes-denied-resources-for-decades-as-federal-acknowledgement-lags/>



"An Introduction into Public Law 280."

by calindian-admin | Nov 5, 2024 | Be the Change

By Dorothy Alther, CILS Legal Director

If you are a California Native American chances are you have heard of Public Law 280 (PL 280) at some point in your life. But what does PL 280 really mean to you, to your tribe, and California tribal communities? The following is a short introduction and overview of PL 280.

Some Basics. As a general matter jurisdiction on Indian reservations cross the country is confusing and complex. PL 280 adds another layer to this complexity and confusion but are some of the basics that will help with your understanding of how PL 280 fits within the jurisdictional framework in California Indian Country.

PL 280 is a federal law passed in 1953 and applies in five states: California, Wisconsin, Minnesota, Oregon and Nebraska (commonly referred to as the "mandatory states"). Alaska was added in 1958.

There are two federal statutes that encompass PL 280: criminal jurisdiction under PL 280 is defined under 18 U.S.C. § 1162 and civil jurisdiction is defined under 28 U.S.C. § 1360.

PL 280 applies in "Indian Country" which is defined under federal law as: Indian reservations (tribal trust lands); Indian allotments (individual trust lands); and "dependent Indian communities". (18 U.S.C. § 1151).

Tribes in the five mandatory states were not consulted with nor was tribal consent required before subjecting tribes and their members to PL 280 jurisdiction.

Jurisdiction in California "Indian Country" *Before* PL 280.

Prior to PL 280, crimes committed in California Indian Country against or by an Indian were prosecuted by the federal government. A tribe had exclusive criminal jurisdiction over lesser crimes if committed by an Indian. Civil cases arising in California Indian Country where one of the parties was a Native American would be heard in tribal court.



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jurisdiction in Indian Country.

Jurisdiction in California "Indian Country" After PL 280.

PL 280 changed the jurisdictional rules in Indian Country for the mandatory states.

Under the criminal portion of PL 280, Congress removed two federal criminal jurisdictional statutes used by the federal government to prosecute crimes in Indian Country and in turn granted the five named states criminal jurisdiction in Indian Country. This does not mean that there are no federal criminal laws applicable in California Indian Country, but PL 280 removed the two main federal statutes specific to crimes occurring in Indian Country. Tribal criminal jurisdiction was not removed under PL 280 except for their exclusive jurisdiction over crimes committed by Indians, that jurisdiction is now shared (concurrent) with the state.

On the civil side of PL 280, state jurisdiction is more limited and was designed to open the door for Native Americans to file private civil suits in state court regardless of whether the defendant is a Native American or a non-Indian and the cause of action occurred in Indian Country.

Although PL 280 opened the door for state concurrent civil jurisdiction in California Indian Country, it did not remove the door from its hinges. The civil PL 280 statute lists a number of exceptions to the state jurisdiction in Indian Country, for example there is no state jurisdiction: to tax trust lands, probate allotted lands, regulate or encumber trust lands, or determine the right to possess or ownership of trust land or property.

What PL 280 did not do:

PL 280 did not "divest" (take away) tribes criminal and civil jurisdiction. Tribes can establish their own courts, law enforcement departments and pass tribal laws enforceable on their land;

PL 280 does not allow the state to impose its civil "regulatory" laws on the reservation (i.e. environmental laws, labor laws, building or fire codes, hunting and fishing regulations, and other laws designed to regulate land use); and

PL 280 does not allow city or municipalities to impose their ordinances on the reservation.



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441 G St. N.W.
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February 25, 2025

The Honorable Lisa Murkowski
Chairman
Committee on Indian Affairs
United States Senate

The Honorable Jeff Merkley
Ranking Member
Subcommittee on Interior, Environment, and Related Agencies
Committee on Appropriations
United States Senate

The Honorable Alex Padilla
United States Senate

The Honorable Jared Huffman
House of Representatives

Subject: Impact of Public Law 280 on Tribal Nations

This letter confirms our commitment to examine Public Law 280's impact on tribal public safety, justice, and related issues, based on your request letter to the Comptroller General. As shared with your staff in December 2024, we plan to deliver our work in two separate reports. The first enclosure sets forth the key aspects of both engagements and enclosure II lists the requesters with whom we will be coordinating our work.

The first engagement (107533) is focused on the impact of P.L. 280 on public safety and justice in Alaska Native villages. We plan to complete our work and send a draft product to the agencies for comment in August 2025.

The second engagement (108087) is focused on the impact of P.L. 280 on tribal public safety and justice in select lower 48 states. We plan to complete our work and send a draft product to the agencies for comment in April 2026.

We look forward to working with you and your staff on these engagements. If you have questions, you may contact me at (202) 512-7952 or GoodwinG@gao.gov. You may also contact the Assistant Director, Tracey Cross, at (213) 830-1030 or CrossTA@gao.gov

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Gretta L. Goodwin". The signature is fluid and cursive, with the first name "Gretta" being more prominent.

Gretta L. Goodwin, Director
Homeland Security and Justice

Enclosure

cc: Amber Ebarb
Lucy Murfitt
Anna Powers
Sarah McKinnis
Meredith Booker
Anthony Sedillo
Sarah Swig
Sarah McKinnis
Morgan McCue
John Driscoll

Terms of Work

Report 1: Impact of Public Law 280 on Alaska Native Villages (107533)

Objectives/Key Questions

To provide information on the impacts of P.L. 280 on public safety and justice in Alaska Native villages, our review will address the following key questions:

1. What do federal data and research show about P.L. 280's impact on public safety and criminal justice in Alaska Native villages?
2. What are tribal, federal, and state officials' views concerning P.L. 280 and its impact on public safety and justice in Alaska?
3. What tribal, federal, state, and local government efforts, are underway to address the public safety and justice challenges related to P.L. 280 in Alaska?

Scope and Methodology

For the first objective, we will synthesize published research from government agencies, academic researchers, legal scholars, and non-governmental stakeholders on tribal public safety and justice in Alaska. We will review available tribal public safety and criminal justice reports from the Department of Justice (DOJ) and Bureau of Indian Affairs (BIA). We will also analyze available Alaska state crime data to determine how crime rates compare with other P.L. 280 and non-P.L. 280 states. We will interview relevant non-governmental stakeholders, academic researchers, and legal scholars with subject matter knowledge on the effects of P.L. 280 on public safety and justice in Alaska Native villages.

For the second objective, we will interview leaders from a non-generalizable selection of Tribes in Alaska. We will also hold listening sessions during site visits to collect village residents' experiences with P.L. 280 jurisdiction and perspectives on the law's impact on tribal public safety and justice. Additionally, we will interview and obtain perspectives from relevant BIA and DOJ officials and officials from the State of Alaska.

For the third objective, we will examine documented tribal, federal, and state efforts to address challenges associated with P.L. 280 in Alaska. The team will analyze related tribal, federal, and state reports and articles documenting instances of such efforts, where they exist. We will also interview select tribal, federal, and state officials that are involved in efforts to address P.L. 280 challenges. To the extent possible, we will also describe tribal, federal, state, and local perspectives on the benefits, challenges, and results of these efforts.

The work will be done in accordance with generally accepted government auditing standards.

Reporting on Status of Our Work

We will periodically discuss the status of our work with you and/or your staff.

Terms of Work

Date to Agencies for Comments

After GAO has developed the product's preliminary message, we will provide a specific date when a draft of the product will be sent to the Department of Interior and Department of Justice for comment. We will provide you with an informational copy of the report when it is sent to the agencies for comment.

Product Issuance Date

Once GAO has received agency comments, we will set a product issuance date and notify you of this date.

Terms of Work

Report 2: Impact of Public Law 280 on Tribal Nations in the Lower 48 States (108087)

Objectives/Key Questions

To provide information on the impact of P.L. 280 on public safety and justice in select lower 48 states, our review will address the following key questions:

1. What do federal data and research show about P.L. 280's impact on tribal public safety and criminal justice in select lower 48 states?
2. What are tribal, federal, and state officials' views concerning P.L. 280 and its impact on public safety and justice in select lower 48 states?
3. What tribal, federal, state, and local government efforts are underway to address the public safety and justice challenges related to P.L. 280 in select lower 48 states?

Scope and Methodology

For the first objective, we will conduct a literature review to synthesize published research on P.L. 280 and its impact on tribal public safety and criminal justice in select lower 48 states. We will also analyze and compare available Bureau of Indian Affairs (BIA) and Department of Justice (DOJ) data on crime and federal public safety and justice funding between P.L. 280-impacted Tribes and non-P.L. 280-impacted Tribes. We will interview relevant non-governmental stakeholders, academic researchers, and legal scholars with subject matter knowledge on the effects of P.L. 280 on public safety and justice in Alaska Native villages.

For the second objective, we will interview a non-generalizable selection of four to five P.L. 280-impacted Tribes in select lower 48 states—including California, Nebraska, and Oregon—during site visits and develop case studies. In making our selection of Tribes, we will consider the Tribe's population size, distance from police precincts, and other factors. Additionally, we will interview relevant federal, state, and local officials about P.L. 280's impact on tribal public safety, criminal justice, staffing, funding, and investigations.

For the third objective, we will analyze documented tribal, federal, and state efforts to address challenges associated with P.L. 280 in select lower 48 states. The team will analyze related tribal, federal, and state reports and articles documenting instances of such efforts, where they exist. We will also interview select tribal, federal, and state officials that are involved in efforts to address P.L. 280 challenges. To the extent possible, we will also describe tribal, federal, state, and local perspectives on the benefits, challenges, and results of these efforts.

The work will be done in accordance with generally accepted government auditing standards.

Reporting on Status of Our Work

We will periodically discuss the status of our work with you and/or your staff.

Terms of Work

Date to Agencies for Comments

After GAO has developed the product's preliminary message, we will provide a specific date when a draft of the product will be sent to the Department of Homeland Security and Department of Justice for comment. We will provide you with an informational copy of the report when it is sent to the agencies for comment.

Product Issuance Date

Once GAO has received agency comments, we will set a product issuance date and notify you of this date.

List of Requesters

The Honorable Lisa Murkowski
Chairman

Committee on Indian Affairs
United States Senate

(Staff Member: Amber Ebarb, Amber_Ebarb@indian.senate.gov, Lucy Murfitt, Lucy_Murfitt@indian.senate.gov, Anna Powers, Anna_Powers@indian.senate.gov, Sarah McKinnis, Sarah_McKinnis@indian.senate.gov)

The Honorable Jeff Merkley
Ranking Member

Subcommittee on Interior, Environment, and Related Agencies
Committee on Appropriations

United States Senate

(Staff Member: Meredith Booker, Meredith_Booker@merkley.senate.gov, Anthony Sedillo, Anthony_Sedillo@appro.senate.gov)

The Honorable Alex Padilla

United States Senate

(Staff Member: Sarah Swig, Sarah_Swig@padilla.senate.gov)

The Honorable Jared Huffman

House of Representatives

(Staff Member: Morgan McCue, Morgan.McCue@mail.house.gov, John Driscoll, John.Driscoll@mail.house.gov)

Gretta L. Goodwin, Director
Homeland Security and Justice
U.S. Government Accountability Office
441 G. St. N.W.
Washington, DC 20548

Re: Impact of Public Law 280 on Tribal Nations

We have reviewed a copy of your letter dated February 25, 2025, concerning the workplan for this study. We hope to ensure that your work on the impact of Public Law 280 on safety and justice in Tribal Nations in the Lower 48 States (engagement 108087) will include California and will include analysis of the impact on access to justice in the courts as well as crime and safety from a law enforcement perspective. We note that two of the four original requestors of this study represent California, Senator Alex Padilla and Congressman Jared Huffman.¹

In the 2020 Census 9.7 million individuals identified as American Indian or Alaska Native (AI/AN) alone or in combination with other races.² Of those over 1.4 million or close to 15% live in California (as compared to roughly 160,000 individuals in Alaska).³ California is also home to 109 of the country's 574 federally recognized tribes⁴. Tribes in California currently have nearly 100 separate reservations or Rancherias. There are also many individual Indian trust allotments⁵. All these lands constitute "Indian Country",⁶ and but for Public Law 280, the federal government would be responsible funding and providing justice services to these lands.

When Public Law 280 was enacted, the federal government not only shifted its direct obligations for justice services to the state of California without any funding, but it also withdrew all support for tribal justice institutions.⁷ Even after it was acknowledged that Public Law 280 did not divest tribes of their inherent concurrent jurisdiction to enforce laws in Indian Country⁸ funding to support the development of tribal justice institutions in Public Law 280 states, including California has not been restored. Neither the states nor the tribes affected by Public Law 280

¹ See request letter dated June 26, 2023 available at: <https://www.padilla.senate.gov/wp-content/uploads/GAO-study-request-on-PL-280-6.26.23.pdf>

² See "2020 Census Illuminates Racial and Ethnic Composition of the Country" available at: <https://www.census.gov/library/stories/2021/08/improved-race-ethnicity-measures-reveal-united-states-population-much-more-multiracial.html>

³ For California census data see: <https://www.census.gov/library/stories/state-by-state/california-population-change-between-census-decade.html>. For Alaska census data see: <https://www.census.gov/library/stories/state-by-state/alaska.html>

⁴ <https://www.bia.gov/service/tribal-leaders-directory>

⁵ See <https://mavensnotebook.com/wp-content/uploads/2019/05/California-Indian-Tribal-Homelands-and-Trust-Land-Map.jpg>

⁶ <https://oag.ca.gov/nativeamerican/indian-country>

⁷ See "Public Law 280 and the Breakdown of Law in California Indian Country" available at: <https://www.aisc.ucla.edu/ca/tribes11.htm>

⁸ See Office of Tribal Justice memorandum dated November 9, 2000. Available at: http://www.justice.gov/d9/2023-11/concurrent_tribal_authority_under_public_law_83_280_2000_memo.pdf

were consulted or provided consent to the federal governments abandonment of its responsibility to provide justice services to tribes in Public Law 280 states.⁹

Much research has been done on the impacts of Public Law 280 on safety and security in Indian County.¹⁰ We understand that the first stage of your investigation will involve a review of that literature. Less research has been done on the fiscal impact of the unfunded mandate that was imposed on states through Public Law 280, and the effect of access to justice through the courts for tribal citizens that has resulted from the withdrawal of funding for tribal courts and other justice institutions. These programs and services include, but are not limited to social service programs, diversion programs, mental health services, probation and the host of other services associated with operating a justice system. Your study will not be complete without research to address these issues.

While adequate law enforcement is certainly an important aspect of public safety and justice in tribal (and all) communities. It is just one piece of the necessary infrastructure of a justice system. Prosecutors and courts are also essential for public safety and justice. We urge you to include discussion with the California Attorney General's Office of Native American Affairs, prosecutors and courts in California that are charged with providing safety and security for tribal lands as part of your study.

Respectfully,

⁹ See <https://oag.ca.gov/nativeamerican/pl280>

¹⁰ See Tribal Law and Policy Institute Public Law 280 Publications available at: <https://www.home.tlpi.org/public-law-280-publications->; "A Second Century of Dishonor: Federal Inequities and California Tribes" Carole Goldberg and Duane Champagne, available at: <https://www.aisc.ucla.edu/ca/Tribes.htm>

The Violence Against Women Act and Domestic Violence – Issues with Recognition and Enforcement and CLETS Access

Hon. Joyce D. Hinrichs

Ms. Merri Lopez-Kiefer, Executive Director, Center for Indigenous Law & Justice, University of California Berkeley School of Law

Overview

Domestic Violence Restraining Orders: Enforcement Issues

Under the federal Violence Against Women Act¹ (“VAWA”), states and tribes are required to provide full faith and credit to qualifying protective orders of each other’s courts. This means they must enforce each other’s orders as if they were the order of the enforcing State or tribe. In practice, however, things are not so simple. Jurisdictional issues arising from the status of lands where offenses are committed and the individuals involved can affect both state and tribal court’s jurisdiction to issue a particular order. Further each law enforcement and judicial system has its own technical and procedural requirements which can affect enforcement of these orders.

Full Faith and Credit

Under VAWA, a protection order must meet the following conditions to be eligible for full faith and credit:

- The order was entered pursuant to a complaint, petition, or motion filed by (or on behalf of) a person seeking protection;
- The court that issued the order had personal jurisdiction over the parties and subject matter jurisdiction over the case; and
- The person against whom the order was issued must have had notice and an opportunity to be heard related to the allegations of abuse and the relief sought².

VAWA only applies to certain types of relationships between the petitioner and the person against whom the order is sought. These include:

- A spouse or former spouse of the respondent or defendant;
- A person who lives or who has lived with the respondent or defendant (i.e., who resides or resided together in a sexual or romantic relationship);
- A child of the respondent or defendant, a child of the intimate partner, or a child in common of the respondent or defendant and the intimate partner (including where parental rights have been terminated); and
- A person with whom the respondent or defendant has or had a child in common (regardless of whether they were married or cohabitated).

¹ See 18 U.S.C. § 2265.

² 18 U.S.C. § 2265(b).

Such a relationship does not include:

- Boyfriends or girlfriends who do not live together or have never lived together;
- Elder abuse;
- Siblings who abuse siblings, uncles or aunts who abuse nieces and nephews, grandparents who abuse grandchildren, etc.;
- Roommates, neighbors, or strangers.

Further, due process requires that a person be served with the protective order before it can be enforced against them, so proof of such service is required before law enforcement will take action.

Under VAWA all protective orders that meet these conditions are entitled to full faith and credit and enforcement including:

- Ex Parte (Temporary or emergency) protection orders – these are entitled to full faith and credit when the abuser has notice and has or will have an opportunity to be heard “within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent’s due process rights.”³
- Consent orders - valid protection order issued by a court on behalf of only one party, does not require specific findings of abuse to be enforceable across jurisdictional lines according to federal law. This means that if a survivor files a petition for a protection order and the abuser consents or agrees to entry of the order, even without admitting to the abuse, the order is still entitled to full faith and credit.
- Default orders - orders may be issued without the respondent present. These orders may be entitled to full faith and credit. If respondents do not appear at a scheduled hearing of which they had prior notice or service, as required by law, and the court enters an order against them by default, the order is entitled to full faith and credit once it is served.
- Mutual orders – if a court issues a single protection order that includes prohibitions or relief against both the petitioner and respondent, such as mutual no contact provisions. The full faith and credit provision of VAWA requires special safeguards for enforcement of this type of order across jurisdictional lines. Under the federal law, an order should be enforced only against the respondent and not the petitioner, unless the respondent cross-filed a separate, written pleading, complaint, or petition for a protection order and the

³ 18 U.S.C. § 2265(b)(2)

issuing court made specific findings that both parties abused each other and were therefore entitled to protection from further abuse⁴.

- Included child custody provisions - protection orders often include terms that award temporary custody of minor children to the victim. VAWA is clear that enforcing courts and law enforcement must enforce custody provisions within protection orders. Full faith and credit applies to 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.⁵
- Criminal protection orders - The full faith and credit provision of VAWA applies to valid criminal protection orders. A criminal protection order may be part of pretrial release orders, bail or bond conditions, or be incorporated into conditions of sentencing, probation, or parole.

Note that the enforcing jurisdiction must enforce the valid terms and conditions in the orders from the issuing jurisdiction even if those terms and conditions are not ones available under the laws of the enforcing jurisdiction. This is important when looking at orders being issued by tribal courts and enforced by state or county law enforcement because tribal law may provide for creative civil remedies against non-Indian offenders over whom the tribe may not have criminal jurisdiction.

Jurisdictional Issues Affecting State Courts

Generally under federal law, states are prohibited from exercising civil or criminal jurisdiction over Indians in “Indian country.”⁶ In California, however, this jurisdictional scheme was altered by Public Law 280 enacted by Congress in 1953. PL 280 transferred federal criminal jurisdiction and conferred some civil jurisdiction on states and state courts in the six mandatory Public Law 280 states. California is a Public Law 280 State. Public Law 280 is now codified in federal law as 28 U.S.C. § 1360 regarding civil jurisdiction and 18 U.S.C. § 1162 regarding criminal jurisdiction. PL-280’s grant of jurisdiction to the state of California and California State Court is not unlimited, however. PL-280 contains several important limitations. Only state criminal prohibitory laws apply in Indian Country. Civil regulatory laws do not apply. Further the State has no authority under PL-280 to regulate the use of trust property or tribal lands.⁷ So, civil protective orders made by a state court may not apply against an Indian in Indian Country.

⁴ 18 U.S.C. § 2265(c)

⁵ 18 U.S.C. § 2266(5)(B)

⁶ “Indian Country” is defined in 18 U.S.C. § 1151

⁷ See 28 USC 1360 (b)

Orders, which purport to regulate the use of trust property such as stay away or move out orders do not apply against an Indian in Indian Country.

Jurisdictional Issues Affecting Tribal Courts

As a general rule, Indian tribes are sovereign nations with the authority to prosecute Indians who commit crimes within tribal jurisdiction.⁸ Tribes generally lack jurisdiction to prosecute non-Indians.⁹ The lack of criminal jurisdiction over non-Indians is a severe limitation on tribe's ability to address family violence on their lands as the majority of abusers are non-native.¹⁰

Congress recently passed the Violence Against Women Reauthorization Act of 2013, or "VAWA 2013" which addresses in part the concern about tribe's lack of jurisdiction over non-Indian abusers in Indian Country. VAWA 2013 recognizes tribes' inherent power to exercise "special domestic violence criminal jurisdiction" 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 new law generally takes effect on March 7, 2015, but there are a number of pre-requisites to a tribe's exercise of this expanded jurisdiction.

Under existing law, the general rule is that tribal law enforcement officers may arrest Indian offenders who violate protection orders (regardless of the issuing jurisdiction). However, they generally do not have authority to arrest non-Indian offenders. Although tribal courts do not have criminal jurisdiction over non-Indians, tribal police usually have authority to stop, detain, transport, and expel non-Indian offenders even in the absence of criminal jurisdiction. Tribal law enforcement officers can also detain and deliver non-Indian perpetrators to state or federal authorities that do have criminal jurisdiction over them. Tribal law enforcement that are deputized by state or county law enforcement, as several California tribal law enforcement agencies are, may also enforce state law in addition to tribal law.

Barriers to Enforcement

VAWA was enacted by Congress in 1994 to address the problem of states' inconsistent enforcement of domestic violence laws. Congress amended the act in 2000, 2005, and 2013.

States are required by federal law to recognize and enforce tribal domestic violence protection orders. (See 18 U.S.C. § 2265 and California's Uniform Interstate Enforcement of Domestic Violence Protection Orders Act (Fam. Code, §§ 6400–6409).) Under these laws, a protective order issued by a tribal or sister-state court is entitled to full faith and credit.

Verification Procedure Through CARPOS/CLETS

⁸ Cohen, *Handbook of Federal Indian Law*, § 9.04

⁹ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978)

¹⁰ See [*Native American Statistical Abstract: Violence and Victimization*](#)

Despite the full faith and credit mandate, county law enforcement agencies do not enforce tribal protective orders unless they can be verified in the Department of Justice California Restraining and Protective Orders System (CARPOS) through California Law Enforcement Telecommunications System (CLETS).

Hit Confirmation Procedure (also known as double hit)

Because CARPOS/CLETS data are entered into the National Crime Information Center (NCIC), the local law enforcement officer must check the state system (CARPOS/CLETS) and then verify this information in the state system. This is a federal requirement of the National Crime Information Center (NCIC), contained in the NCIC Operational Manual, Section 3.5, which requires a hit confirmation.¹¹ County law enforcement follows this procedure to verify that a tribal protective order is valid and current. This verification is accomplished by the officer contacting the agency that entered the data, which in turn checks its law enforcement agency's local record management system. This hit confirmation may result in unnecessary delays, placing the safety of the protected person at risk of being revictimized.

Tribal Access to CARPOS/CLETS

¹¹ National Crime Information Center (NCIC) Manual Section 3.5 Hit Confirmation Procedures. Any agency which receives a record(s) in response to an NCIC inquiry must confirm the hit on any record(s) which appears to have been entered for the person or property inquired upon prior to taking any of the following actions based upon the hit NCIC record: 1) arresting the wanted person, 2) detaining the missing person, 3) seizing the stolen property, or 4) charging the subject with violating a protection order. Additionally, an agency detaining an individual on local charges where the individual appears identical to the subject of the wanted person record and is within the geographical area of extradition must confirm the hit.

Confirming a hit means to contact the agency that entered the record to:

1. Ensure that the person or property inquired upon is identical to the person or property identified in the record;
2. Ensure that the warrant, missing person report, protection order, or theft report is still outstanding; and
3. Obtain a decision regarding: 1) the extradition of a wanted person when applicable, 2) information regarding the return of the missing person to the appropriate authorities, 3) information regarding the return of stolen property to its rightful owner, or 4) information regarding the terms, conditions, and service of a protection order.
Note: The source documents used for hit confirmation may be electronic if the local agency has implemented the controls required by the CTA for electronic documents supporting NCIC records.
4. Determine if the entering agency wants the record to be located when the missing person was identified by partial body parts.

Unfortunately, most tribal courts and law enforcement agencies in California do not have access to CARPOS/CLETS, or other similar law enforcement data bases. Nor do tribes have their own databases.

Fees Associated With Orders

VAWA also prohibits states, tribes, and territories that receive certain types of federal funds from imposing fees on protection order issuance and implementation. In other words, courts cannot charge for filing, issuance, service, witness subpoenas, registration, and other costs associated with protection orders. The prohibition requires law enforcement to serve protection orders on respondents without any payment of service fees by survivors both within the issuing jurisdiction and in enforcing states, tribal lands, and territories. Sometimes, lack of resources and knowledge of the law results in fees imposed.

Inter-Court Cooperation: Exploring Solutions Together to Improve Enforcement

Registration

The California Tribal Court/State Court Forum initiated a solution, which attempts to work around the challenge that tribes do not have access to enter data into CARPOS/CLETS and county law enforcement will not enforce a tribal protective order unless it is in this database. Although registration of a tribal protective order is not a pre-requisite to enforcement¹², rule 5.386 of the California Rules of Court requires state courts, on request by a tribal court, to adopt a written procedure or local rule permitting the fax or electronic filing of any tribal court protective order entitled under Family Code section 6404 to be registered. Under this rule, if a tribal court in California elects to send (electronically or otherwise) its protective order to a California state court to register it, then after it is registered, it is automatically entered into CARPOS/CLETS the same way that a state court or sister state protective order is. See link for examples of local written procedures or rules: <http://www.courts.ca.gov/17422.htm>.

Unfortunately, despite this work-around, tribal court judges report instances where their orders were not enforced because they had not been entered into CARPOS/CLETS. In some jurisdictions, the presiding judge of the superior court and the chief judge of the tribal court revisit the local procedure with local law enforcement to ensure it is working efficiently.

Preventing Redundant and Conflicting Orders

¹² VAWA explicitly states that registration or filing of protection orders cannot be a prerequisite for enforcement (18 U.S.C. § 2265(d) (2)). In California registration and enforcement of out of state protective orders, which include protective orders issued by tribal courts both inside and outside California is governed generally by Family Code §§ 6400 – 6409. These confirm that registration of foreign protection orders is not required, and that such an order that is valid on its face should be enforced by law enforcement.

Through the California Courts Protective Order Registry, which is a dedicated online database of the State Judicial Branch, state courts and tribal courts can view each other's protective orders. The courts that have access are better able to protect the public, particularly victims of domestic violence, and avoid issuing redundant or conflicting orders. Learn more at www.courts.ca.gov/15574.htm.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-132 effective, to extent constitutionally permissible, for sentencing proceedings in cases in which defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104-132, set out as a note under section 2248 of this title.

§ 2265. Full faith and credit given to protection orders

(a) **FULL FAITH AND CREDIT.**—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 Territory¹ as if it were the order of the enforcing State or tribe.

(b) **PROTECTION ORDER.**—A protection order issued by a State, tribal, or territorial court is consistent with this subsection if—

(1) such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and

(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(c) **CROSS OR COUNTER PETITION.**—A protection order issued by a State, tribal, or territorial court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if—

(1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

(2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

(d) **NOTIFICATION AND REGISTRATION.**—

(1) **NOTIFICATION.**—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 that the protection order has been registered or filed in that enforcing State, tribal, or territorial jurisdiction unless requested to do so by the party protected under such order.

(2) **NO PRIOR REGISTRATION OR FILING AS PRE-REQUISITE FOR ENFORCEMENT.**—Any protection order that is otherwise consistent with this section 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.

(3) **LIMITS ON INTERNET PUBLICATION OF REGISTRATION INFORMATION.**—A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes. The prohibition under this paragraph applies to all protection orders for the protection of a person residing within a State, territorial, or Tribal jurisdiction, whether or not the protection order was issued by that State, territory, or Tribe.

(e) **TRIBAL COURT JURISDICTION.**—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.

(Added Pub. L. 103-322, title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1930; amended Pub. L. 106-386, div. B, title I, § 1101(b)(4), Oct. 28, 2000, 114 Stat. 1493; Pub. L. 109-162, title I, § 106(a)-(c), Jan. 5, 2006, 119 Stat. 2981, 2982; Pub. L. 109-271, § 2(n), Aug. 12, 2006, 120 Stat. 754; Pub. L. 113-4, title IX, § 905, Mar. 7, 2013, 127 Stat. 124; Pub. L. 117-103, div. W, title I, § 106, Mar. 15, 2022, 136 Stat. 851.)

Editorial Notes

AMENDMENTS

2022—Subsec. (d)(3). Pub. L. 117-103 struck out “restraining order or injunction,” after “a protection order,” and inserted at end “The prohibition under this paragraph applies to all protection orders for the protection of a person residing within a State, territorial, or Tribal jurisdiction, whether or not the protection order was issued by that State, territory, or Tribe.”

2013—Subsec. (e). Pub. L. 113-4 added subsec. (e) and struck out former subsec. (e). Prior to amendment, text read as follows: “For purposes of this section, a tribal court shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe.”

2006—Subsec. (a). Pub. L. 109-162, § 106(a)(1), (b), substituted “, Indian tribe, or territory” for “or Indian tribe” wherever appearing and “and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory as if it were” for “and enforced as if it were”.

Subsec. (b). Pub. L. 109-162, § 106(a)(2), substituted “State, tribal, or territorial” for “State or tribal” in introductory provisions.

Subsec. (b)(1). Pub. L. 109-162, § 106(a)(1), substituted “, Indian tribe, or territory” for “or Indian tribe”.

¹ So in original. Probably should not be capitalized.

Subsec. (b)(2). Pub. L. 109-162, §106(a)(2), substituted “State, tribal, or territorial” for “State or tribal”.

Subsec. (c). Pub. L. 109-162, §106(a)(2), substituted “State, tribal, or territorial” for “State or tribal” in introductory provisions.

Subsec. (d)(1). Pub. L. 109-162, §106(a), substituted “, Indian tribe, or territory” for “or Indian tribe” in two places and “State, tribal, or territorial” for “State or tribal”.

Subsec. (d)(2). Pub. L. 109-162, §106(a)(2), substituted “State, tribal, or territorial” for “State or tribal”.

Subsec. (d)(3). Pub. L. 109-271, which directed amendment of section 106(c) of Pub. L. 109-162 by substituting “the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction” for “the registration or filing of a protection order”, was executed by making the substitution in par. (3), which was added by section 106(c) of Pub. L. 109-162, to reflect the probable intent of Congress.

Pub. L. 109-162, §106(c), added par. (3).

2000—Subsecs. (d), (e). Pub. L. 106-386 added subsecs. (d) and (e).

Statutory Notes and Related Subsidiaries

SPECIAL RULE FOR THE STATE OF ALASKA

Pub. L. 113-4, title IX, §910, Mar. 7, 2013, 127 Stat. 126, which provided that, in the State of Alaska, the amendments made by sections 904 and 905 of Pub. L. 113-4, which related to tribal jurisdiction over crimes of domestic violence and over issuance of protection orders, applied only to the Indian country of the Metlakatla Indian Community, Annette Island Reserve, was repealed by Pub. L. 113-275, Dec. 18, 2014, 128 Stat. 2988.

§ 2265A. Repeat offenders

(a) **MAXIMUM TERM OF IMPRISONMENT.**—The maximum term of imprisonment for a violation of this chapter after a prior domestic violence or stalking offense shall be twice the term otherwise provided under this chapter.

(b) **DEFINITION.**—For purposes of this section—

(1) the term “prior domestic violence or stalking offense” means a conviction for an offense—

(A) under section 2261, 2261A, or 2262 of this chapter; or

(B) under State or tribal law for an offense consisting of conduct that would have been an offense under a section referred to in subparagraph (A) if the conduct had occurred within the special maritime and territorial jurisdiction of the United States, or in interstate or foreign commerce; and

(2) the term “State” means a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

(Added Pub. L. 109-162, title I, §115, Jan. 5, 2006, 119 Stat. 2988; amended Pub. L. 113-4, title IX, §906(c), Mar. 7, 2013, 127 Stat. 125.)

Editorial Notes

AMENDMENTS

2013—Subsec. (b)(1)(B). Pub. L. 113-4 inserted “or tribal” after “State”.

§ 2266. Definitions

In this chapter:

(1) **BODILY INJURY.**—The term “bodily injury” means any act, except one done in self-defense, that results in physical injury or sexual abuse.

(2) **COURSE OF CONDUCT.**—The term “course of conduct” means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose.

(3) **ENTER OR LEAVE INDIAN COUNTRY.**—The term “enter or leave Indian country” includes leaving the jurisdiction of 1 tribal government and entering the jurisdiction of another tribal government.

(4) **INDIAN COUNTRY.**—The term “Indian country” has the meaning stated in section 1151 of this title.

(5) **PROTECTION ORDER.**—The term “protection order” includes—

(A) 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; and

(B) 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.

(6) **SERIOUS BODILY INJURY.**—The term “serious bodily injury” has the meaning stated in section 2119(2).

(7) **SPOUSE OR INTIMATE PARTNER.**—The term “spouse or intimate partner” includes—

(A) for purposes of—

(i) sections other than 2261A—

(I) a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or

(II) a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship; and

(ii) section 2261A—

(I) a spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; or

(II) a person who is or has been in a social relationship of a romantic or intimate nature with the target of the stalking, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction



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FAMILY CODE - FAM

DIVISION 10. PREVENTION OF DOMESTIC VIOLENCE [6200 - 6460] (*Division 10 repealed and added by Stats. 1993, Ch. 219, Sec. 154.)*

PART 5. UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT [6400 - 6409] (*Part 5 added by Stats. 2001, Ch. 816, Sec. 3.)*

6400. This part may be cited as the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act. (*Added by Stats. 2001, Ch. 816, Sec. 3. Effective January 1, 2002.*)

6401. In this part:

- (1) "Foreign protection order" means a protection order issued by a tribunal of another state.
- (2) "Issuing state" means the state whose tribunal issues a protection order.
- (3) "Mutual foreign protection order" means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.
- (4) "Protected individual" means an individual protected by a protection order.

(5) "Protection order" means an injunction or other order, issued by a tribunal under the domestic violence, family violence, or antistalking 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 individual.

(6) "Respondent" means the individual against whom enforcement of a protection order is sought.

(7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or any branch of the United States military, that has jurisdiction to issue protection orders.

(8) "Tribunal" means a court, agency, or other entity authorized by law to issue or modify a protection order.

(Amended by Stats. 2003, Ch. 134, Sec. 1. Effective January 1, 2004.)

6402. (a) A person authorized by the law of this state to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a tribunal of this state. The tribunal shall enforce the terms of the order, including terms that provide relief that a tribunal of this state would lack power to provide but for this section. The tribunal shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of this state for the enforcement of protection orders.

(b) A tribunal of this state may not enforce a foreign protection order issued by a tribunal of a state that does not recognize the standing of a protected individual to seek enforcement of the order.

(c) A tribunal of this state shall enforce the provisions of a valid foreign protection order which govern custody and visitation, if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.

(d) A foreign protection order is valid if it meets all of the following criteria:

(1) Identifies the protected individual and the respondent.

(2) Is currently in effect.

(3) Was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state.

(4) Was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the rights of the respondent to due process.

(e) A foreign protection order valid on its face is prima facie evidence of its validity.

(f) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

(g) A tribunal of this state may enforce provisions of a mutual foreign protection order which favor a respondent only if both of the following are true:

(1) The respondent filed a written pleading seeking a protection order from the tribunal of the issuing state.

(2) The tribunal of the issuing state made specific findings in favor of the respondent.

(Amended by Stats. 2003, Ch. 134, Sec. 2. Effective January 1, 2004.)

6403. (a) A law enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of this state. Presentation of a protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes, in and of itself, probable cause to believe that a valid foreign protection order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.

(b) If a foreign protection order is not presented, a law enforcement officer of this state may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

(c) If a law enforcement officer of this state determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent, and allow the respondent a reasonable opportunity to comply with the order before enforcing the order. Verbal notice of the terms of the order is sufficient notice for the purposes of this section.

(d) Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order pursuant to this part.

(Added by Stats. 2001, Ch. 816, Sec. 3. Effective January 1, 2002.)

6404. (a) A foreign protection order shall, upon request of the person in possession of the order, be registered with a court of this state in order to be entered in the California Restraining and Protective Order System established under Section 6380. The Judicial Council shall adopt rules of court to do the following:

(1) Set forth the process whereby a person in possession of a foreign protection order may voluntarily register the order with a court of this state for entry into the California Restraining and Protective Order System.

(2) Require the sealing of foreign protection orders and provide access only to law enforcement, the person who registered the order upon written request with proof of identification, the defense after arraignment on criminal charges involving an alleged violation of the order, or upon further order of the court.

(b) A fee shall not be charged for the registration of a foreign protection order. The court clerk shall provide all Judicial Council forms required by this part to a person in possession of a foreign protection order free of charge.

(Amended by Stats. 2019, Ch. 115, Sec. 72. (AB 1817) Effective January 1, 2020.)

6405. (a) 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.

(b) If there is more than one order issued and one of the orders is an emergency protective order that has precedence in enforcement pursuant to paragraph (1) of subdivision (c) of Section 136.2 of the Penal Code, the peace officer shall enforce the emergency protective order. If there is more than one order issued, none of the orders issued is an emergency protective order that has precedence in enforcement, and one of the orders issued is a no-contact order, as described in Section 6320, the peace officer shall enforce the no-contact order. If there is more than one civil order regarding the same parties and neither an emergency protective order that has precedence in enforcement nor a no-contact order has been issued, the peace officer shall enforce the order that was issued last. If there are both civil and criminal orders regarding the same parties and neither an emergency protective order that has precedence in enforcement nor a no-contact order has been issued, the peace officer shall enforce the criminal order issued last.

(c) Nothing in this section shall be deemed to exonerate a peace officer from liability for the unreasonable use of force in the enforcement of the order. The immunities afforded by this section shall not affect the availability of any other immunity that may apply, including, but not limited to, Sections 820.2 and 820.4 of the Government Code.

(Amended by Stats. 2013, Ch. 263, Sec. 3. (AB 176) Effective January 1, 2014. Operative July 1, 2014, by Sec. 5 of Ch. 263.)

6406. A protected individual who pursues remedies under this part is not precluded from pursuing other legal or equitable remedies against the respondent.

(Added by Stats. 2001, Ch. 816, Sec. 3. Effective January 1, 2002.)

6407. In applying and construing this part, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that also have adopted the act cited in Section 6400.


(Added by Stats. 2001, Ch. 816, Sec. 3. Effective January 1, 2002.)

6408. If any provision of this part or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this part which can be given effect without the invalid provision or application, and to this end the provisions of this part are severable.

(Added by Stats. 2001, Ch. 816, Sec. 3. Effective January 1, 2002.)

6409. This part applies to protection orders issued before January 1, 2002, and to continuing actions for enforcement of foreign protection orders commenced before January 1, 2002. A request for enforcement of a foreign protection order made on or after January 1, 2002, for violations of a foreign protection order occurring before January 1, 2002, is governed by this part.

(Added by Stats. 2001, Ch. 816, Sec. 3. Effective January 1, 2002.)

<p>California Department of Justice DIVISION OF LAW ENFORCEMENT John D. Marsh, Chief</p> 	<h1 style="text-align: center;">INFORMATION BULLETIN</h1>	
<p><i>Subject:</i></p> <p>Enforcement of Tribal Court Protection Orders</p>	<p><i>No.</i></p> <p>2022-DLE-11</p>	<p><i>Contact for information:</i></p> <p>John D. Marsh, Chief Division of Law Enforcement (916) 210-6300</p>
	<p><i>Date:</i></p> <p>9/30/2022</p>	

TO: All CALIFORNIA DISTRICT ATTORNEYS, CHIEFS OF POLICE, SHERIFFS, AND STATE LAW ENFORCEMENT AGENCIES

This bulletin is designed to ensure that state and local law enforcement officials across California have the necessary information to enforce and prosecute violations of tribal court protection orders. Enforcement of protection orders across jurisdictional lines is a critical component of protecting victims of violence. This is a supplement to Information Bulletin No. DLE-2016-03.

TRIBAL COURT PROTECTION ORDERS ARE TO BE GIVEN "FULL FAITH AND CREDIT"

Both California and federal law under the Violence Against Women Act (VAWA) require all law enforcement officers of this state to give full faith and credit to tribal court protection orders, sometimes called "protective orders," issued by a [federally-recognized tribe](#), and enforce those orders accordingly. ([Cal. Fam. Code, §§ 6400-6409 \[Uniform Interstate Enforcement of Domestic Violence Protective Orders Act\]](#); [18 U.S.C. § 2265 \[Violence Against Women Act\]](#).)

Full faith and credit requires that valid civil and criminal protective orders must be enforced by local and state law enforcement to protect victims wherever a violation of an order occurs, regardless of where the order was issued. ([18 U.S.C. § 2265.](#)) VAWA defines "protection order" as "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[.]" ([18 U.S.C. § 2266\(5\)\(A\).](#)) VAWA also encompasses protections contained in support, child custody, and visitation orders and protective directives in other court orders. ([18 U.S.C. § 2266\(5\)\(B\).](#)) Emergency, ex parte, temporary, and final orders are also subject to full faith and credit under VAWA. ([18 U.S.C. 2265\(b\)\(2\).](#))

FORMAT OF A TRIBAL COURT PROTECTIVE ORDER MAY VARY FROM TRIBE TO TRIBE

California is home to one of the largest populations of American Indian/Alaska Native people in the nation. There are [574 federally recognized tribes](#) in the United States. Of those 574 tribes, California is home to 109 federally recognized tribes. There is no standard format for tribal court protection orders. Therefore, California law enforcement may come into contact with hundreds of different formats of tribal court protection orders: they may differ from an order issued by a California court in name, verbiage, content, layout, and duration.

TRIBAL PROTECTIVE ORDERS DO NOT NEED TO BE LOCATED IN NCIC OR CLETS DATABASES

Law enforcement officers must enforce valid tribal court protection orders, whether or not they are registered or filed. However, it is important to note that nationwide, many tribal courts enter their protective orders directly into the National Crime Information Center (NCIC), and not in the California Restraining and Protection Orders System (CARPOS) or the California Law Enforcement Telecommunications System (CLETS).

- Therefore, California law enforcement officers SHALL NOT require any of the following when being asked to enforce a tribal court protective order:
 - Presentation of a certified copy of the tribal court protection order. The order may be inscribed on any tangible medium or stored in an electronic or other medium if it is retrievable in perceivable form. ([Cal. Fam. Code, § 6403, subd. \(a\).](#))
 - Registration or filing of the protection order with the state. ([Cal. Fam. Code, § 6403, subd. \(d\).](#))
 - Verification in any statewide database (for example, the California Law Enforcement Telecommunications System (CLETS) or the California Restraining and Protective Order System (CARPOS)). ([Cal. Fam. Code § 6403, subd. \(d\).](#))

DETERMINING PROBABLE CAUSE FOR ENFORCEMENT

- When a tribal court protective order is presented to a law enforcement officer:
Presentation of a protection order that identifies both: (1) the protected individual and the individual against whom enforcement is sought and, (2) on its face, appears to be currently in effect, constitutes probable cause to believe that a valid tribal court protection order exists. ([Cal. Fam. Code, § 6403, subd. \(a\).](#)) Once there is probable cause to believe that a valid tribal court protection order exists, a law enforcement officer must enforce the order as if it were an order issued by a California court. ([Cal. Fam. Code, § 6403, subd. \(a\); 18 U.S.C. § 2265\(a\).](#))
- When a tribal court protective order is NOT presented to a law enforcement officer:
If a protection order is not presented, a law enforcement officer may consider other information to determine if there is probable cause to believe that a valid order exists. ([Cal. Fam. Code, § 6403, subd. \(b\).](#))

IF AN ORDER HAS NOT BEEN SERVED, LAW ENFORCEMENT SHALL SERVE THE ORDER

If a law enforcement officer determines that an otherwise valid tribal court protection order cannot be enforced because the respondent (i.e., the individual against whom enforcement is sought) has not been notified or served with the order, the officer shall inform him or her of the order, make a reasonable effort to serve the order, and allow him or her a reasonable opportunity to comply with the order before enforcing it. Verbal notice of the order is sufficient. ([Cal. Fam. Code, § 6403, subd. \(c\).](#)) Service of the order should then be noted in the law enforcement officer's report.

THERE IS NO CIVIL LIABILITY IF LAW ENFORCEMENT ACTS IN GOOD FAITH

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 protective or restraining 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. ([Cal. Fam. Code, § 6383, subd. \(h\)\(1\).](#))

CONTACT INFORMATION

The California Department of Justice takes great pride in assisting local law enforcement agencies in enforcing criminal and civil laws and protections. Should your agency require technical assistance, please contact the Department's Division of Law Enforcement at (916) 210-6300 or the Department's Office of Native American Affairs at (916) 210-6474.

Clerk stamps date here when form is filed.

1 Name of Protected Person:

Your lawyer in this case (*if you have one*):

Name: _____ State Bar No.: _____

Firm Name: _____

Address (*If you have a lawyer for this case, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, give a different mailing address instead. You do not have to give your telephone, fax, or e-mail.*):

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

E-Mail Address: _____

Fill in court name and street address:

Superior Court of California, County of

Fill in case number:

Case Number:

2 Name of Restrained Person:

Description of restrained person:

Sex: ☐ M ☐ F Height: _____ Weight: _____ Hair Color: _____ Eye Color: _____

Race: _____ Age: _____ Date of Birth: _____

Address (*if known*): _____

City: _____ State: _____ Zip: _____

Relationship to protected person: _____

3 I am protected by the attached protective/restraining order. The order was made by (*name and address of court*):

4 The attached order:

- Is a true and correct copy
- Is currently valid and in full force and effect
- Has not been changed, canceled, or replaced by any other order
- Was made in a different state, U.S. territory, Indian tribal court, the District of Columbia, Puerto Rico, US Virgin Islands, or in a military court
- Expires on (*date*) _____

5 I ask that the attached order be registered with this court for entry into the California Law Enforcement and Telecommunication System (CLETS). My request is voluntary. I understand that registration of the order is not necessary for enforcement.

I declare under penalty of perjury under the laws of the State of California that the above information is true and correct.

Date: _____

Type or print your name

Sign your name

This is a Court Order.



The attached out-of-state restraining order is registered, valid, and enforceable in California, and can be entered into CLETS, unless it ends or is changed by the court that made it.

Date: _____

*Judge (or Judicial Officer)***Court Clerk Must Seal This Form and Attached Foreign Protection Order**

This form sets forth the procedure to register a foreign protection order under Family Code section 6404. No court hearing is required to register the foreign protection order. This form and the attached foreign protection order must be sealed pursuant to Family Code section 6404(a). Access to the foreign protection order is allowed only to law enforcement, the person who registered the order upon written request with proof of identification, the defense after arraignment on criminal charges involving an alleged violation of the order, or upon further order of the court.

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate
[seal]

I certify that this *Order to Register Out-of-State or Tribal Court Protective/Restraining Order* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

Issues related to Criminal Law and Jurisdiction – Solutions when tribes do not have or cannot exercise criminal jurisdiction.

Hon. Dean Stout, Chief Judge of the Bishop Tribal Court, Judge of the Superior Court of California, County of Inyo (Ret.)

Hon. Alison M. Tucher, Presiding Justice of the Court of Appeal, First Appellate District, Division Three

Merri Lopez-Keifer

CALIFORNIA

Tribes Seek More Power for Their Police Forces

By **DEBORAH SULLIVAN BRENNAN**

Dec. 27, 2000 12 AM PT

SPECIAL TO THE TIMES

INDIO — Cabazon tribal police officers have chased drunk drivers only to see them careen off the reservation in defiance.

The officers have ticketed midnight dumpers who ditched illegal loads of trash here--20 miles east of Palm Springs--then skipped their court dates with impunity.

“We can’t chase these criminals off the reservation,” said Cabazon Tribal Police Chief Paul Hare. “All we can do is advise other law enforcement agencies [of the crime]. So a lot of people commit these crimes and get away.”

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New streams of wealth flowing to Indian reservations through casinos have allowed some California tribes to form their own police departments and hire officers trained by the same programs that prepare sheriff's deputies and municipal police. Of about 100 California tribes, at least nine have full-fledged police departments, and many others have rangers or security forces.

Yet their badges lack the luster of their county and city counterparts. In California, tribal officers hold authority only to enforce tribal laws among tribe members on tribal land. Off the reservation, or in incidents involving non-tribal members or state

penal code violations, they must conduct citizen's arrests, then wait for sheriff's deputies to finish the job.

A coalition of 67 California tribes is negotiating with the state attorney general, the federal Department of Justice and the California State Sheriffs Assn. to give tribal officers full law enforcement authority. That would allow them not only to pursue, arrest and book suspects, but also to conduct investigations and share crime information with other agencies.

State Sen. Richard Alarcon (D-Sylmar) has pledged to introduce legislation early next year to grant state peace officer status to tribal police and seek federal funding to help tribes without their own police forces pay for outside help.

California sheriffs agree that any addition to law enforcement ranks is good for the public, but they say the details will make or break the plan.

Any plan should hold tribal police to the same standards as other officers, sheriffs say. It should provide means for citizens injured due to police misconduct to get redress, they say, noting that tribes are immune to civil litigation under U.S. law. And it should map out how tribal officers, whose pay comes largely from casino revenues, would fairly probe crimes associated with such businesses.

Some who have been in the trenches with tribal police are more confident. Humboldt County Sheriff Dennis Lewis has deputized Hoopa Valley tribal officers and said both

forces benefit from the arrangement.

“The advantage to them is that they can take prompt, corrective action. If arrest is necessary, they can do that,” he said. “The advantage to me is it helps me do my job.”

The current limits on tribal police power stem from an earlier effort to ensure order on Native American lands. In 1953 Congress perceived a gap in law enforcement on reservations and passed a law to fill it, said Jacqueline Agtuca, deputy director of the office of tribal justice in the U.S. Department of Justice. Legislation gave responsibility for law enforcement on reservations in Alaska, California, Minnesota, Nebraska, Oregon and Wisconsin to state governments.

Nearly half a century later, California tribes complain that the law has tied the hands of their police departments--just as reservations are seeing crime surge with new cash and visitors brought by casinos. Drug sales, alcohol offenses, assaults, burglaries and car thefts all come with that gambling territory, tribal police say.

For mystery lovers, such officers have come into view through the best-selling novels of Tony Hillerman, who weaves tales around the lives of Navajo tribal police. Like Hillerman's hamstrung heroes, who must often hand over hot leads to coolly receptive federal agents, real tribal officers frequently find themselves dependent on outside authorities to close their cases.

“We have 1.7 million [people] coming onto the reservation properties over a year for the entertainment venues,” Cabazon Police Chief Hare said. “And we only have this citizen’s arrest power, which means that once we are detaining these people, then we have to wait for the sheriff to arrive.”

Tribal officers can hold suspects for only a limited time without risking charges of illegal imprisonment. If sheriff’s deputies are occupied when that time elapses, tribal police must release the suspects.

Driving behind the reservation power plant toward a tribal burial site, Cabazon Officer Phil Weigle pointed to old furniture, beer cases, even an abandoned hot tub left by illegal dumpers. Officers cite offenders, but the tribal court has no binding power over non-tribal members.

“So there’s really no deterrent to whatever illegal activity they want to do,” Weigle said.

Traffic stops can be hair-raising for officers, who have no access to state criminal databases that can warn whether a vehicle holds a wanted felon or just a distracted driver. Some suspects, spotting a tribal squad car, simply speed off the reservation and out of reach.

The Cabazons have sued the Riverside County Sheriff’s Department over the tribe’s right to display light bars on police cars driving on and off tribal land through the

checkerboard reservation. The lawsuit describes an 1996 instance in which a woman died of a heart attack at the tribal casino while local police detained a tribal officer who was heading to the emergency.

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Will AB 3099 Create a more Uniform and Positive Response to Criminal Activities Occurring within California Indian Country?

by webadmin | Nov 9, 2020 | Tribal Justice

By Denise Bareilles, CILS Eureka office Directing Attorney

Governor Newsom signed Assembly Bill 3099 into law on September 25, 2020. What will it accomplish?

Under Public Law (PL) 280, passed in 1953, the state of California was granted concurrent criminal jurisdiction in all of California's "Indian Country"^[1]. What this means is that the state can enforce its criminal laws on the reservation and tribes can also enforce their own laws on their lands.^[2] PL 280 can and often does create jurisdictional uncertainties, inconsistencies, and confusion on when and how state and/or tribal authorities should respond to crimes in Indian Country. AB 3099 seeks to address policing issues in Indian Country.

AB 3099 will provide technical assistance to state and local law enforcement agencies with Indian lands within or near their jurisdictions as well as to tribal governments with a tribal land base, regardless of whether the tribes have law enforcement agencies.

Furthermore, AB 3099 will address missing and murdered Native Americans in California by determining how to increase state criminal justice protective and investigative resources for reporting and identifying



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The California Department of Justice is charged with implementing AB 3099. Below are the specific AB 3099 mandates:

The first mandate addresses the inconsistent application of PL 280 throughout California Indian County

- Provide guidance for law enforcement education and training on policing and criminal investigations on Indian lands that support consistent implementation of California's responsibilities for enforcing statewide criminal laws on Indian lands that protect the health, safety, and welfare of tribal citizens on Indian lands.
- Provide guidance on improving crime reporting, crime statistics, criminal procedures, and investigative tools for conducting police investigations of statewide criminal laws on Indian lands.
- Provide educational materials about the complexities of concurrent criminal jurisdiction with tribal governments and their tribal law enforcement agencies, specifically to tribal citizens on Indian lands, including information on how to report a crime, and information relating to victim's rights and victim services in California
- Facilitate and support improved communication between state and local law enforcement agencies and tribal government or tribal law enforcement agencies for consistent implementation of concurrent criminal jurisdiction on California Indian lands.

The second mandate addresses the crisis of missing and murdered Native Americans in California, particularly women and girls (not limited to Indian lands).

- Determine the scope of the issue of missing and murdered Native Americans, particularly women and girls.
- Identify barriers in reporting or investigation.



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- Submit a report to the Legislature upon completing the study that will describe the data collected, an analysis of the number of missing Native Americans in California, particularly women and girls, and the barriers preventing the provision of state resources to address the issue(s).
- Recommendations, including proposed legislation, for improving the reporting and identification of murdered and missing Native Americans in California, particularly women and girls.

See [here](#) the full text of Assembly Bill 3099

[1] “Indian Country” is defined under federal law as including: tribal lands, Indian allotments and dependent Indian communities. 18– U.S.C. § 1151

[2] Please note that PL 280 also granted the state of California limited civil jurisdiction in California Indian Country.

<input type="text"/>	Search
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INDIAN COUNTRY CRIMINAL JURISDICTIONAL CHART

for crimes committed within Indian country as defined by 18 U.S.C. § 1151(a), (b) & (c) -

- (a) **formal** [recognized reservation boundaries] & **informal** [tribal trust lands] **reservations** (including rights-of-way/roads),
 (b) **dependent Indian communities**, & (c) **Indian allotments held in trust or restricted status** (including rights-of-way/roads).
(applies where no U.S. Congressional grant of jurisdiction to the state/municipal government over the Indian country involved exists)

INDIAN OFFENDER :

1. VICTIM CRIMES: FOR OFFENSES AGAINST A PERSON OR A PERSON'S PROPERTY (not a tribal govt.)

WHO IS THE VICTIM?	WHAT WAS THE CRIME?	JURISDICTION
INDIAN (enrolled or recognized as an Indian by a federally recognized tribe or the federal government <u>and</u> possessing some degree of Indian blood)	Major Crimes Act Crimes: murder; manslaughter; kidnapping; maiming; sexual abuse/assault under Ch. 109-A; <u>incest</u> ; assault with intent to commit murder or in violation of 18 U.S.C. § 2241 or §2242; assault with intent to commit any felony; assault with a dangerous weapon with intent to do bodily harm; assault resulting in serious bodily injury as defined in 18 U.S.C. § 1365; assault resulting in substantial bodily injury of a spouse, intimate partner or dating partner, or on a person under 16 years old; assault of a spouse, intimate partner or dating partner by strangulation; <u>felony child abuse</u> or neglect; arson; <u>burglary</u> ; robbery; felony theft under 18 U.S.C. § 661. (Authority: Major Crimes Act - 18 U.S.C. § 1153) (underlined: assimilated state offense- 18 U.S.C. § 13)	FEDERAL #
	All remaining crimes contained in tribal code: (Authority: tribal code or 25 CFR Pt. 11, if a CFR Court of Indian Offenses)	TRIBAL *
NON-INDIAN	Major Crimes Act Crimes: murder; manslaughter; kidnapping; maiming; sexual abuse/assault under Ch. 109-A; <u>incest</u> ; assault with intent to commit murder or in violation of 18 U.S.C. § 2241 or §2242; assault with intent to commit any felony; assault with a dangerous weapon; assault resulting in serious bodily injury; assault resulting in substantial bodily injury of a spouse, intimate partner or dating partner, or on a person under 16 years old; assault of a spouse, intimate partner or dating partner by strangulation; <u>felony child abuse</u> or neglect; arson; <u>burglary</u> ; robbery; felony theft under 18 U.S.C. § 661. (Authority: Major Crimes Act - 18 U.S.C. § 1153) (underlined: assimilated state offense - 18 U.S.C. § 13)	FEDERAL #
	Federal Territorial Crimes: (unless the tribe has punished the Indian defendant) (Authority: General Crimes Act/Indian Country Crimes Act - 18 U.S.C. § 1152) including crimes contained in state code (where there is no federal statute for the category of offense) under the Assimilative Crimes Act: (18 U.S.C. § 13)	FEDERAL #
	All remaining crimes contained in tribal code: (Authority: tribal code or 25 CFR Pt. 11, if a CFR Court of Indian Offenses)	TRIBAL *

2. VICTIMLESS CRIMES: NO PERSON OR PERSON'S PROPERTY INVOLVED

(e.g., traffic violations w/ no injury/damage to a person or their property, disorderly conduct, prostitution, violation of court order, etc.)

a. Crimes in state code (where there is no federal statute for the category of offense) under the Assimilative Crimes Act. (Authority: 18 U.S.C. §§ 1152 and 13)	FEDERAL #
b. Crimes in tribal code. (Authority: tribal code or 25 CFR Pt. 11, if CFR Court)	TRIBAL *

3. SPECIAL CRIMES APPLICABLE TO INDIAN COUNTRY (Indian or Non-Indian)

FEDERAL #

(Federal prosecution based on crime committed in Indian country)

(e.g., Habitual Domestic Violence, 18 U.S.C. § 117; Failure to Register as Sex Offender, 18 U.S.C. § 2250; Unauthorized Hunting/Fishing, 18 U.S.C. § 1165 [tribal trust land and allotments only]; and other statutes)

4. FEDERAL CRIMES GENERALLY APPLICABLE TO ANY PERSON NATIONWIDE (Indian or Non-Indian) (Crime Affecting Interstate Commerce or a Federal Interest)

FEDERAL #

(Federal prosecution NOT based on territorial jurisdiction over location of crime)

(e.g., drug offenses, Violence Against Women Act (VAWA) offenses, firearm possession by prohibited person, tribal embezzlement, assault on a federal officer, theft from tribal casino, child porn., etc.) (Authority: individual federal statute)

NON-INDIAN OFFENDER:

1. VICTIM CRIMES: FOR OFFENSES AGAINST A PERSON OR PERSON’S PROPERTY (not a tribal govt.)

WHO IS THE VICTIM?	WHAT WAS THE CRIME?	JURISDICTION
INDIAN (enrolled or recognized as an Indian by a federally recognized tribe or the federal government <u>and</u> possessing some degree of Indian blood)	<p>Federal Territorial Crimes: (Authority: General Crimes Act/Indian Country Crimes Act - 18 U.S.C. § 1152) including crimes contained in state code (where there is no federal statute for the category of offense) under the Assimilative Crimes Act: (18 U.S.C. §§13)</p> <p>Assaults of tribal justice personnel, child violence, dating violence, domestic violence, obstruction of justice, sexual violence, sex trafficking, stalking, and violation of a protection order (Special Tribal Criminal Jurisdiction - “STCJ”) (Authority: tribal code under 25 U.S.C. § 1304 – VAWA 2022) eff. 10/1/22</p> <p>All crimes in state code. (Authority: <i>Oklahoma v. Castro-Huerta</i>, No. 21-429 (U.S. Supr. Ct., 2022))</p>	<p>FEDERAL %</p> <p>TRIBAL * ▲</p> <p>STATE</p>
NON-INDIAN	<p>All crimes in state code. (Authority: <i>U.S. v. McBratney</i>, 104 U.S. 621 (1881))</p> <p>Assaults of tribal justice personnel or obstruction of justice (Special Tribal Criminal Jurisdiction - “STCJ”) (Authority: tribal code under 25 U.S.C. §1304 – VAWA 2022) eff. 10/1/22</p>	<p>STATE</p> <p>TRIBAL * ▲</p>

2. VICTIMLESS CRIMES: NO PERSON OR PERSON’S PROPERTY INVOLVED

STATE

(e.g., traffic violations w/ no injury/damage to a person or their property, disorderly conduct, prostitution, violation of court order, etc.)

3. SPECIAL CRIMES APPLICABLE TO INDIAN COUNTRY (Indian or Non-Indian)

FEDERAL #

(Federal prosecution based on crime committed in Indian country)

(e.g., Habitual Domestic Violence, 18 U.S.C. § 117; Failure to Register as Sex Offender, 18 U.S.C. § 2250; Unauthorized Hunting/Fishing, 18 U.S.C. § 1165 [tribal trust land and allotments only]; and other statutes)

4. FEDERAL CRIMES GENERALLY APPLICABLE TO ANY PERSON NATIONWIDE (Indian or Non-Indian) (Crime Affecting Interstate Commerce or a Federal Interest)

FEDERAL #

(Federal prosecution NOT based on territorial jurisdiction over location of crime)

(e.g., drug offenses, Violence Against Women Act (VAWA) offenses, firearm possession by prohibited person, tribal embezzlement, assault on a federal officer, theft from tribal casino, child porn., etc.) (Authority: individual federal statute)

* A tribal court may be: 1) a tribal court established under tribal law; 2) or a “CFR” Court of Indian Offenses established under Title 25, Part 11, Code of Federal Regulations for a tribe without a court system; or 3) An Alaska Native Village Court with jurisdiction over Alaska Village land as defined by Section 812 (7) of VAWA 2022. 25 U.S.C. §1305

▲ Applicable in an Alaska village only if part of a designated U.S. Department of Justice “Pilot Project”

includes juveniles (under 18 YOA at time of the incident) prosecuted as delinquents under 18 U.S.C. § 5032, if the state lacks or refuses to assume jurisdiction or it is a felony crime of violence or specified offense listed in 18 U.S.C. § 5032 and there is a substantial Federal interest

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*created by Arvo Q. Mikkonen, Assistant U.S. Attorney & Tribal Liaison,
U.S. Attorney’s Office, Western District of Oklahoma*

October 2022 Version

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State of California

PENAL CODE

Section 830.6

830.6. (a) (1) Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a reserve deputy sheriff, a reserve deputy marshal, a reserve police officer of a regional park district or of a transit district, a reserve park ranger, a reserve harbor or port police officer of a county, city, or district as specified in Section 663.5 of the Harbors and Navigation Code, a reserve deputy of the Department of Fish and Game, a reserve special agent of the Department of Justice, a reserve officer of a community service district which is authorized under subdivision (h) of Section 61600 of the Government Code to maintain a police department or other police protection, a reserve officer of a school district police department under Section 35021.5 of the Education Code, a reserve officer of a community college police department under Section 72330, a reserve officer of a police protection district formed under Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code, or a reserve housing authority patrol officer employed by a housing authority defined in subdivision (d) of Section 830.31, and is assigned specific police functions by that authority, the person is a peace officer, if the person qualifies as set forth in Section 832.6. The authority of a person designated as a peace officer pursuant to this paragraph extends only for the duration of the person's specific assignment. A reserve park ranger or a transit, harbor, or port district reserve officer may carry firearms only if authorized by, and under those terms and conditions as are specified by, his or her employing agency.

(2) Whenever any qualified person is deputized or appointed by the proper authority as a reserve or auxiliary sheriff or city police officer, a reserve deputy sheriff, a reserve deputy marshal, a reserve park ranger, a reserve police officer of a regional park district, transit district, community college district, or school district, a reserve harbor or port police officer of a county, city, or district as specified in Section 663.5 of the Harbors and Navigation Code, a reserve officer of a community service district that is authorized under subdivision (h) of Section 61600 of the Government Code to maintain a police department or other police protection, or a reserve officer of a police protection district formed under Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code, and is so designated by local ordinance or, if the local agency is not authorized to act by ordinance, by resolution, either individually or by class, and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state by that authority, the person is a peace officer, if the person qualifies as set forth in paragraph (1) of subdivision (a) of Section 832.6. The authority of a person designated as a peace officer pursuant to this paragraph includes the full powers and duties of a peace officer as provided by Section 830.1.

A transit, harbor, or port district reserve police officer, or a city or county reserve peace officer who is not provided with the powers and duties authorized by Section 830.1, has the powers and duties authorized in Section 830.33, or in the case of a reserve park ranger, the powers and duties that are authorized in Section 830.31, or in the case of a reserve housing authority patrol officer, the powers and duties that are authorized in subdivision (d) of Section 830.31, and a school district reserve police officer or a community college district reserve police officer has the powers and duties authorized in Section 830.32.

(b) Whenever any person designated by a Native American tribe recognized by the United States Secretary of the Interior is deputized or appointed by the county sheriff as a reserve or auxiliary sheriff or a reserve deputy sheriff, and is assigned to the prevention and detection of crime and the general enforcement of the laws of this state by the county sheriff, the person is a peace officer, if the person qualifies as set forth in paragraph (1) of subdivision (a) of Section 832.6. The authority of a peace officer pursuant to this subdivision includes the full powers and duties of a peace officer as provided by Section 830.1.

(c) Whenever any person is summoned to the aid of any uniformed peace officer, the summoned person is vested with the powers of a peace officer that are expressly delegated to him or her by the summoning officer or that are otherwise reasonably necessary to properly assist the officer.

(Amended by Stats. 2007, Ch. 118, Sec. 1. Effective January 1, 2008.)

REQUEST AND DECLARATION FOR ORDER OF PROTECTION

(TRIBAL COUNCIL ORDER OF EXCLUSION)



**IN THE BISHOP PAIUTE TRIBAL COURT
FOR THE BISHOP PAIUTE TRIBE**
ADDRESS: 50 TU SU LANE
BISHOP, CA 93514
(760) 784-9581

☐ Original ☐ Amended on: _____

TRIBAL RESOLUTION:

CASE NUMBER:
BT-CV-EX-

1 NAME OF PROTECTED PERSONS/ENTITY:

THE BISHOP PAIUTE TRIBE

Authorized Tribal Representatives:

Name: STEVEN ORIHUELA Title: CHAIRPERSON, BISHOP PAIUTE TRIBAL COUNCIL
 Name: RAYMOND ALLEN Title: POLICE CHIEF, BISHOP PAIUTE TRIBE
 Address: BISHOP PAIUTE TRIBAL ADMINISTRATION BUILDING
50 TU SU LANE
 City: BISHOP State: CA Zip: 93514
 Telephone: 760-873-3584 Ext.: 1960 Fax: 760-873-4143
 Email: raymond.allen@bishoppaiute.org

2 EXCLUDED PERSON: *Full Name*

Description of Excluded person:

Sex: ☐ M ☐ F Height: _____ Weight: _____ Hair Color: _____ Eye Color: _____
 Race: _____ Age: _____ Date of Birth: _____
 Mailing Address (if known): _____
 City: _____ State: _____ Zip: _____
 Relationship to Protected Person: **NON-TRIBAL MEMBER**

3 REQUESTED EXPIRATION DATE

Date: _____ at (time): _____ ☐ a.m. ☐ p.m. or ☐ midnight

This is not a Court Order

REQUEST & DECLARATION FOR ORDER OF PROTECTION
TRIBAL COUNCIL RESOLUTION FOR EXCLUSION

4 DECLARATION IN SUPPORT OF REQUEST:

- A. The Court is requested to take "judicial notice" of its own files, the Codes/Ordinances of the Bishop Paiute Tribe, and the Resolutions and Minutes of the Bishop Paiute Tribal Council pertaining to or relevant to this action, including, but not limited to, Bishop Paiute Tribal Code Title 7 - *Health and Safety*; Chapter 7.6 -*Exclusion Code*.
- B. The Bishop Paiute Tribal Council is the duly elected governing body of the Bishop Paiute Tribe, a federally recognized Indian Tribe, located within Inyo County, California.
- C. By the Bishop Paiute Tribal Council's enactment on November 14, 2019, of *Title 7-Health and Safety; Chapter 7.6- Exclusion Code*, the Bishop Paiute Tribal Council affirmed the Tribe's inherent authority to exclude individuals from its tribal lands (reservation), as recognized by the Supreme Court of the United States under *Dura v. Reina*, 495 U.S. 676 (1990).
- D. The person named in ② above is not an enrolled member of the Bishop Paiute Tribe.
- E. The Bishop Paiute Tribal Council provided reasonable notice and a reasonable opportunity for the person in ② to be heard as described herein below: *(If additional space is required, please attach additional page or pages marked as Declaration in Support Item 4. E)*
 - ☐ The person in ② was duly served with a copy of the "Request for Exclusion" and a "Notice of Hearing" to be held before the Bishop Paiute Tribal Council, and that a hearing was duly conducted, all as required by the aforesaid Bishop Paiute Tribal Code, Title 7, Chapter 7.6, Section C.4.
 - ☐ Emergency Exclusion Without Prior Hearing: For the reasons stated in Item 4, F, (n) below, the Bishop Paiute Tribal Council found that there was an immediate need to order the exclusion of the person named in ②, from the Bishop Paiute Indian Reservation and that the granting of notice and opportunity to be heard to such person prior to making such order would cause a serious detriment or harm to the interests of the Tribe, its members, or other residents of the Reservation, as further provided in the aforesaid Bishop Paiute Tribal Code, Title 7, Chapter 7.6, Section C. 3. Therefore, the Bishop Paiute Tribal Council requests a "Temporary Order of Protection" until the Tribal Council complies with the service, notice, and hearing requirements of Section C. 3. of Chapter 7.6, of Title 7 of the aforesaid Bishop Paiute Tribal Code, and we represent that the Tribal Council will do as soon as possible. Once the Tribal Council has complied with the requirements of Section C. 3. of Chapter 7.6 of Title 7, the Tribal Council will file an amended Request & Declaration for Order of Protection, or file a Request for Termination of the Temporary Order. The Tribal Council understands that the Court may set periodic review hearings with respect to said compliance.

**REQUEST & DECLARATION FOR ORDER OF PROTECTION
TRIBAL COUNCIL RESOLUTION FOR EXCLUSION**

- F.** The Bishop Paiute Tribal Council found that the person in ❷ has committed an act or acts that constitute one or more grounds for Exclusion under the aforesaid Exclusion Code (Title 7, Chapter 7.6, Section 4). *(Check all that apply)*
- ☐ a. Committing repeated invasion of the privacy of Tribal members or Reservation residents as evidenced by restraining orders against that person by three or more Tribal members, the Tribe, or Reservation residents.
 - ☐ b. Suffering a conviction within the previous seven-year period of a serious felony, including, but not limited to: arson, murder, rape, assault with a deadly weapon, or a sexual offense against a minor.
 - ☐ c. Engaging in illegal activity involving controlled substances, its production, manufacture, trafficking, distribution, or cultivation, including the cultivation of marijuana plants within the Reservation.
 - ☐ d. Suffering a conviction within the previous three-year period of felony domestic violence or multiple domestic violence offenses that involved physical injury or sexual assault.
 - ☐ e. Committing repeated or especially serious damage to the property or natural resources of the Tribe, including, but not limited to, land clearing, timber harvesting, and air or water quality impacts.
 - ☐ f. Having previously violated or is currently violating the Bishop Paiute Tribe's Tribal Employment Rights Ordinance.
 - ☐ g. Conducting business on the Reservation in violation of any tribal law, ordinance, or code.
 - ☐ h. Causing disturbances of celebrations or ceremonies within the Reservation.
 - ☐ i. Removing or attempting to remove any Bishop Paiute tribal property from the Reservation without proper authority.
 - ☐ J. Removing or attempting to remove any minor from the Reservation without proper authority.
 - ☐ k. Having been excluded from a neighboring reservation for offenses stated herein.
 - ☐ L. Engaging in other misconduct or creating an objectionable condition that threatens the life, health, safety, or property of a Tribal member, a Reservation resident, or the Tribe, which the Bishop Paiute Tribal Council has found to be sufficient cause for exclusion.
 - ☐ m. Has committed a violation of the aforesaid Bishop Paiute Tribe's Exclusion Code, as provided in Chapter 7.6 of Title 7.

**REQUEST & DECLARATION FOR ORDER OF PROTECTION
TRIBAL COUNCIL RESOLUTION FOR EXCLUSION**

n. The factual basis supporting the above findings under Chapter 7.6, Section 4, are as follows:

(If additional space is required, please attach an additional page(s) marked as Declaration in Support Item 4, F, n.)
(You may attach supporting documents marked as Declaration in Support Item 4, F, n.)

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

**REQUEST & DECLARATION FOR ORDER OF PROTECTION
TRIBAL COUNCIL RESOLUTION FOR EXCLUSION**

- G. The Bishop Paiute Tribal Council has duly adopted a Resolution ordering the exclusion of the person named in ② from the Bishop Paiute Indian Reservation, and prohibiting the person named in ② from entering the exterior boundaries of the Bishop Paiute Indian Reservation without first obtaining written authorization from the Bishop Tribal Council.
- H. The Bishop Paiute Tribal Council found that the person in ② poses a real and present threat to the health, safety, and welfare of the Bishop Paiute Tribal Community Members.
- I. The Bishop Paiute Tribal Council found that the person in ② is to be considered "persona non grata" and as such, was ordered, prohibited, excluded from entering the exterior boundaries of the Bishop Paiute Indian Reservation for the term proscribed in the aforesaid Resolution.
- J. The Tribal Council respectfully asserts that the aforesaid Tribal Resolution, and if issued, this Court's Order of Protection based on this Request, are entitled to "*fall faith and credit*."
- K. ☐ A copy of the aforesaid Resolution No. _____, entitled _____, and dated _____, is attached hereto and incorporated herein by reference, as though set forth fully and at length. The expiration date on said exclusion Resolution is _____
- L. ☐ Other relevant factual history:

⑤ REQUEST FOR EXCLUSION ORDER per Bishop Paiute Tribal Code, Title 7 -*Health and Safety*, Chapter 7.6 -*Exclusion Code*

☐ On behalf of the Bishop Paiute Tribe, it is hereby requested that the Bishop Paiute Tribal Court issue a Restraining Order - Order of Protection, ordering that the person in ② is excluded from the Bishop Paiute Indian Reservation, and must not enter the exterior boundaries of the Bishop Paiute Indian Reservation, located within Inyo County, California, without first obtaining written authorization from the Bishop Paiute Tribal Council.

☐ On behalf of the Bishop Paiute Tribe, it is hereby requested that the Bishop Paiute Tribal Court issue a Restraining Order - Order of Protection, ordering that the person in ② is excluded from and must not enter the following described area(s) within the Bishop Paiute Indian Reservation, located within Inyo County, California:

⑥ ☐ MOVE-OUT ORDER

On behalf of the Bishop Paiute Tribe, it is hereby requested that the person in ② be ordered to move out immediately from (address): _____

The aforesaid address is located within the boundaries of the Bishop Paiute Indian Reservation.

**REQUEST & DECLARATION FOR ORDER OF PROTECTION
TRIBAL COUNCIL RESOLUTION FOR EXCLUSION**

7 ☐ **OTHER REQUESTED ORDERS**

8 ☐ **ADDITIONAL PAGES ATTACHED TO THIS REQUEST, WHICH ARE INCORPORATED HEREIN BY REFERENCE.** Number of pages _____

I, _____ hereby declare that I am authorized to make this Request and execute this Declaration on behalf of the Bishop Paiute Tribal Counsel, and I further declare under penalty of perjury that the foregoing statements contained in this Request and Declaration are to the best of my knowledge true and correct.

Executed this _____ day of _____, 20____ at the Bishop Paiute Indian Reservation, Inyo County, California.

Type/Print Petitioner's Name

Petitioner's Title

Petitioner's Signature

This is not a court order

**REQUEST & DECLARATION FOR ORDER OF PROTECTION
TRIBAL COUNCIL RESOLUTION FOR EXCLUSION**

NOTICE OF HEARING (TRIBAL COUNCIL ORDER OF EXCLUSION)



**IN THE BISHOP PAIUTE TRIBAL COURT
FOR THE BISHOP PAIUTE TRIBE
ADDRESS: 50 TU SU LANE
BISHOP, CA 93514
(760) 784-9581**

☐ Original Notice

☐ Amended on: _____

CASE NUMBER:

1 NAME OF PROTECTED PERSON/ENTITY:

Authorized Tribal Representatives:

Name: _____ Title: _____
 Name: _____ Title: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Telephone: _____ Ext.: _____ Fax: _____
 Email: _____

2

EXCLUDED PERSON: *Full Name*

3 NOTICE OF HEARING:

A court hearing is scheduled on the request for Protection Orders/Tribal Council Order of Exclusion against the person in ②:

HEARING DATE/TIME	
Date:	
Time:	<input type="checkbox"/> a.m. <input type="checkbox"/> p.m.

Location: Bishop Paiute Tribal Court, 50 Tu Su, Lane, Bishop, CA 93514

(Tribal Chambers Building)

**NOTICE OF HEARING
PROTECTION ORDER
(Tribal Council Order of Exclusion)**

Page 1 of 2

4 TEMPORARY PROTECTION ORDERS (any orders granted are attached on form BPT-EX-110)

- a. Temporary restraining orders for personal conduct, stay away, and protection of animals, as requested in form BPT-EX-100, *Request for Protection Order*, are:
- (1) ☐ All **GRANTED** until the court hearing.
 - (2) ☐ All **DENIED** until the court hearing (*specify reasons for denial in (b)*):
 - (3) ☐ Partly **GRANTED** and **PARTLY** denied until the court hearing
- b. Requested temporary protection orders for personal conduct, stay away, and protection of animals are denied because:
- (1) ☐ The facts as stated in form BPT-EX-100 do not show reasonable proof of a past act or acts of abuse.
 - (2) ☐ The facts do not describe in sufficient detail the most recent incidents of abuse, such as what happened, the dates, who did what to whom, or any injuries or history of abuse.
 - (3) ☐ Further explanation of reason for denial, or reason not listed above:

5 SERVICE OF DOCUMENTS AND TIME FOR SERVICE – FOR PERSON IN ①

At least ☐ five or _____ days before the hearing, someone age 18 or older (not you or anyone to be protected) must personally serve on the person in ② the following forms:

- a. A file-stamped copy of this form BPT-EX-109 *Notice of Hearing*
- b. A file-stamped copy of form BPT-EX-100 *Request for Protection Order* with attachments
- c. Form BPT-EX-110, *Temporary Protection Order* (file-stamped) with applicable attachments **if granted by the judge**
- d. Form BPT-PO-120, *Response to Request for Protection Order* (**blank form**)
- e. Form BPT-PO-250, *Proof of Service by Mail* (blank form)
- f. Other (specify): _____

Date: _____

Judicial Officer

Right to Cancel Hearing: Information for Person in ①

- If item ④(a)(2) or ④(a)(3) is checked, the judge has denied some or all the temporary orders you requested until the court hearing. The judge may make the orders you want after the court hearing. You can keep the hearing date, or you can cancel your request for orders so there is no court hearing.
- If you want to cancel the hearing, use Form BPT-PO-112, *Waiver of Hearing on Denied Request for Temporary Restraining Order*. Fill it out and file it with the court as soon as possible. You may file a new request for orders, on the same or different facts, later.
- If you cancel the hearing, do not serve the documents listed in item ⑤ on the other person.
- If you want to keep the hearing date, you must have all the documents listed in item ⑤ served on the other person within the time listed in item ⑤.
- At the hearing, the judge will consider whether denial of any requested orders will jeopardize your safety and the safety of children for whom you are requesting custody or visitation.
- You must come to the hearing if you want the judge to make restraining orders or continue any orders already made. If you cancel the hearing or do not come to the hearing, any restraining orders made on Form BPT-EX-110 will end on the date of the hearing.

**NOTICE OF HEARING
PROTECTION ORDER
(Tribal Council Order of Exclusion)**

Page 2 of 2

TEMPORARY ORDER OF PROTECTION (TRIBAL COUNCIL ORDER OF EXCLUSION)



IN THE BISHOP PAIUTE TRIBAL COURT
FOR THE BISHOP PAIUTE TRIBE
ADDRESS: 50 TU SU LANE
BISHOP, CA 93514
(760) 784-9581

☐ Original

☐ Amended on: _____

CASE NUMBER: _____

TRIBAL RESOLUTION NO.

1 NAME OF PERSON ASKING FOR PROTECTION:

THE BISHOP PAIUTE TRIBE

Authorized Tribal Representatives:

Tribal Chairperson: _____ Organization: _____

Tribal Administrator or
Designated Representative _____ Organization: _____

Address: 50 TU SU LANE

City: BISHOP State: CA Zip: 93514

Telephone: (760) 873-3584 Fax: (760) 873-4143

E-Mail Address: _____

2 NAME OF PERSON TO BE RESTRAINED:

Description of restrained person:

Sex: ☐ M ☐ F Height: _____ Weight: _____ Hair Color: _____ Eye Color: _____

Race: _____ Age: _____ Date of Birth: _____

Mailing Address (if known): _____

City: _____ State: _____ Zip: _____

Relationship to protective person: **NON-TRIBAL MEMBER**

3 EXPIRATION DATE

This order expires at the end of the hearing scheduled for the date and time below:

HEARING DATE/TIME	
Date:	_____
Time:	_____ <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.

THIS IS A COURT ORDER

**TEMPORARY PROTECTION ORDER
TRIBAL EXCLUSION**

Page 1 of 5

4 TRIBAL COURT FINDINGS

- a. The Court has taken judicial notice of its own files, the Codes/Ordinances of the Bishop Paiute Tribe, the resolutions and Minutes of the Bishop Paiute Tribal Council; and having considered all the evidence, both oral and documentary, and good cause appearing therefore, the Court finds as follows:
- b. The Bishop Paiute Tribal Council is the duly elected governing body of the Bishop Paiute Tribe, a federally recognized Indian Tribe, located within Inyo County, California.
- c. By the Bishop Paiute Tribal Council's enactment on November 14, 2019, of *Title 7 – Health and Safety; Chapter 7.6 – Exclusion Code*, the Bishop Paiute Tribal Council affirmed the Tribe's inherent authority to exclude individuals from its tribal lands (reservation), as recognized by the Supreme Court of the United States under *Duro v. Reina*, 495 U.S. 676 (1990).
- d. The person named in ② above is not an enrolled member of the Bishop Paiute Tribe.
- e. **The Tribal Council Resolution identified herein was issued by the Bishop Tribal Council on an emergency basis, pursuant to the aforesaid Exclusion Code, Chapter 7.6, subdivision C, subsection 3. This temporary order is issued on an *ex parte* basis pending the Tribal Council's compliance with provisions of Chapter 7.6, including subdivision C, subsection 3.**
- f. The Bishop Paiute Tribal Council found that the person in ② has committed an act or acts that constitute one or more grounds for Exclusion under the aforesaid Exclusion Code (Title 7, Chapter 7.6, Section 4).
- g. The Bishop Paiute Tribal Council found that the person in ② poses a real and present threat to the health, safety, and welfare of the Bishop Paiute Tribal Community Members.
- h. In the discretion of the Bishop Paiute Tribal Council, they found that the person in ② is to be considered "persona non grata" and as such, was ordered, prohibited, excluded from entering the exterior boundaries of the Bishop Paiute Reservation for the term proscribed in the aforesaid Resolution.
- i. Sufficient evidence has been shown to this Court that the findings and actions of the Bishop Paiute Tribal Council with respect to the exclusion of the person in ②, were in compliance with the aforesaid Exclusion Code, that good cause was shown to support their findings and actions, and that the same did not constitute an abuse of discretion.
- j. ☐ A copy of the aforesaid Resolution No. _____, entitled _____, and dated _____, is attached hereto and incorporated herein by reference, as though set forth fully and at length.
- k. ☐ Other Findings: _____

To the person in ②

The court has granted the orders below. If you do not obey these orders, you can be arrested and charged with a crime. You may be criminally prosecuted in the Superior Court of California, County of Inyo. You may be sent to jail for up to one year, pay a fine up to \$1000, or both. Also, if you fail to comply with these orders, it will result in a violation of Bishop Paiute Tribal law and will be treated accordingly as both a criminal and/or civil violation

5 STAY-AWAY/EXCLUSION BANISHMENT ORDER

It is hereby ordered that you (the person in ②) must not enter the exterior boundaries of the Bishop Paiute Reservation, located within Inyo County, California, without first obtaining written authorization from the Bishop Paiute Tribal Council.

**TEMPORARY PROTECTION ORDER
TRIBAL EXCLUSION**

6 ☐ **MOVE-OUT ORDER**

The person in ② must move out immediately from (address): _____

7 **NO GUNS OR OTHER FIREARMS OR AMMUNITION ORDER**

- a. The person in ② cannot own, possess, have, buy, or try to buy, receive, or try to receive, or in any other way get guns, other firearms, or ammunition.
- b. The person in ② must:
- Sell to, or store with, a licensed gun dealer, or turn in to a law enforcement agency, any guns, or other firearms within his or her immediate possession or control. Do so within 24 hours of being served with this order.
 - Within 48 hours of receiving this order, file with the court a receipt that proves guns have been turned in, sold, or stored. (Form BPT-DV-800, *Proof of Firearms Turned In, Sold, or Stored, may be used for the receipt*). Bring a court filed copy to the hearing.
- c. ☐ The court has received information that the person in ② owns or possesses a firearm.

8 ☐ **OTHER ORDERS** ☐ **ADDITIONAL PAGES ATTACHED AS PART OF THIS ORDER****9** **SERVICE**

- a. ☐ The person in ② was at the hearing or agreed in writing to this order. No other proof of service is needed.
- b. ☐ The person in ② was not present. The person in ② must be personally served a copy of this order.

10 **NO FEE FOR SERVICE**

The Bishop Paiute Tribal Council is a Tribal public entity, acting on behalf of the Bishop Paiute Tribe, and is entitled to a fee waiver

Date: _____

Dean T. Stout, Chief Judge
Bishop Paiute Tribal Court

**TEMPORARY PROTECTION ORDER
TRIBAL EXCLUSION**

Warnings and Notices to the Restrained Person in ②

If you do not obey this order, you can be arrested and charged with a crime.

- If you do not obey this order, you can go to jail or prison and/or pay a fine. If you do not obey this order, you can be prosecuted in the Superior Court of California. Also, a violation of this order will be treated as a violation of Bishop Paiute Tribal law and will be treated accordingly as both a criminal and/or a civil violation.

You cannot have guns, firearms, ammunition, ammunition feeding devices, including magazines



While this order is in effect, you cannot own, have, possess, buy, or try to buy, receive, or try to receive, or otherwise get guns, other firearms, ammunition, or ammunition feeding devices, including, but not limited to, magazines. If you do, you can go to jail and pay a \$1,000 fine. Unless the court grants an exemption, you must sell to, or store with, a licensed gun dealer, or turn into a law enforcement agency, any guns, or other firearms that you have or control. The judge will ask you for proof that you did so. If you do not obey this order, you can be charged with a crime. Federal law says you cannot have guns or ammunition while the order is in effect. Even if exempt under California law, you may be subject to federal prosecution for possessing or controlling a firearm.

If You Need to Appear in this Court

If you are cited, subpoenaed, or ordered to appear (whether as a party or witness) in this Bishop Paiute Tribal Court which is located on the Bishop Paiute Reservation, or wish to file or respond to an action in this Court, you must first contact the Bishop Paiute Tribal Clerk for instructions. You may not physically appear without a prior order (permission) of the Bishop Paiute Tribal Council and this Court. Contact information for the Tribal Court Clerk and Tribal Administration is on page 1 above.

Instructions for Law Enforcement

Enforcing the Restraining Order

This Order is entitled to full faith and credit. The Order is enforceable by any law enforcement agency that has received the Order, is shown a copy of the Order, or has verified its existence on the National Crime Information Center (NCIC), California Law Enforcement Telecommunications System (CLETS), and/or on the California Restraining and Protective Order System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing, the agency must advise the restrained person of the terms of the Order and then must enforce it. Violations of this Order are subject to criminal penalties.

Start Date and End Date of Orders

The *orders* start on the judge signed the order or the filing date, whichever is earlier.

The orders *end* on the expiration date in item ③ on page 1.

Arrest Required if Order is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code. §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code sections 166 or 273.6.

TEMPORARY PROTECTION ORDER TRIBAL EXCLUSION

Clerk's Certificate

I certify that this *Temporary Protective Order-Order of Exclusion* is a true and correct copy of the original on file in the Bishop Paiute Tribal Court.

Clerk's Certificate
[seal]

Date: _____ Yolanda Cortez
Clerk of the Court, by _____, Deputy

TEMPORARY PROTECTION ORDER TRIBAL EXCLUSION

RESTRAINING ORDER ORDER OF PROTECTION (TRIBAL COUNCIL ORDER OF EXCLUSION)



IN THE BISHOP PAIUTE TRIBAL COURT
FOR THE BISHOP PAIUTE TRIBE
ADDRESS: 50 TU SU LANE BISHOP, CA
93514
(760) 784-9581

☐ Original

☐ Amended on: _____

CASE NUMBER: _____

TRIBAL RESOLUTION NO.

1 NAME OF PERSON ASKING FOR PROTECTION:

THE BISHOP PAIUTE TRIBE

Authorized Tribal Representatives:

Tribal Chairperson: STEVEN ORIHUELA Organization: BISHOP PAIUTE TRIBAL COUNCIL

Designated Representative RAYMOND ALLEN Organization: POLICE CHIEF, BISHOP PAIUTE TRIBE

Address: 50 TU SU LANE

City: BISHOP State: CA Zip: 93514

Telephone: (760) 873-3584 Fax: (760) 873-4143

E-Mail Address: raymond.allen@bishoppaiute.org

2 NAME OF PERSON TO BE RESTRAINED:

Description of restrained person:

Sex: ☐ M ☐ F Height: _____ Weight: _____ Hair Color: _____ Eye Color: _____
 Race: _____ Age: _____ Date of Birth: _____
 Mailing Address (if known): _____
 City: _____ State: _____ Zip: _____
 Relationship to protective person: NON-TRIBAL MEMBER

THIS IS A COURT ORDER

**RESTRAINING ORDER
ORDER OF EXCLUSION/BANISHMENT**

Page 1 of 5

3 EXPIRATION DATE

The orders, except as noted below, end on

(date): _____ at (time): _____ ☐ a.m. ☐ p.m. or ☐ midnight

- If no date is written, the restraining order ends three years after the date of issuance in item ⑤ (a).
- If no time is written, the restraining order end at midnight on the expiration date.

4 TRIBAL COURT FINDINGS

- a. The Court has taken judicial notice of its own files, the Codes/Ordinances of the Bishop Paiute Tribe, the resolutions and Minutes of the Bishop Paiute Tribal Council; and having considered all the evidence, both oral and documentary, and good cause appearing therefore, the Court finds as follows:
- b. The Bishop Paiute Tribal Council is the duly elected governing body of the Bishop Paiute Tribe, a federally recognized Indian Tribe, located within Inyo County, California.
- c. By the Bishop Paiute Tribal Council's enactment on November 14, 2019, of *Title 7 – Health and Safety; Chapter 7.6 – Exclusion Code*, the Bishop Paiute Tribal Council affirmed the Tribe's inherent authority to exclude individuals from its tribal lands (reservation), as recognized by the Supreme Court of the United States under *Duro v. Reina*, 495 U.S. 676 (1990).
- d. The person named in ② above is not an enrolled member of the Bishop Paiute Tribe.
- e. The Bishop Paiute Tribal Council having given reasonable notice and provided a reasonable opportunity for the person in ② to be heard, duly adopted a Resolution ordering the exclusion or banishment of the person named in ② from the Bishop Paiute Reservation, and prohibiting the person named in ② from entering the exterior boundaries of the Bishop Paiute Reservation without first obtaining written authorization from the Bishop Tribal Council.
- f. The Bishop Paiute Tribal Council found that the person in ② has committed an act or acts that constitute one or more grounds for Exclusion under the aforesaid Exclusion Code (Title 7, Chapter 7.6, Section 4).
- g. The Bishop Paiute Tribal Council found that the person in ② poses a real and present threat to the health, safety, and welfare of the Bishop Paiute Tribal Community Members.
- h. In the discretion of the Bishop Paiute Tribal Council, they found that the person in ② is to be considered "persona non grata" and as such, was ordered, prohibited, excluded from entering the exterior boundaries of the Bishop Paiute Reservation for the term proscribed in the aforesaid Resolution.
- i. Sufficient evidence has been shown to this Court that the findings and actions of the Bishop Paiute Tribal Council with respect to the exclusion of the person in ②, were in compliance with the aforesaid Exclusion Code, that good cause was shown to support their findings and actions, and that the same did not constitute an abuse of discretion.
- j. The Court further finds that said Tribal Resolution and this Protection Order are entitled to "*full faith and credit*."
- k. ☐ A copy of the aforesaid Resolution No. _____, entitled _____, and dated _____, is attached hereto and incorporated herein by reference, as though set forth fully and at length.
- l. ☐ Other Findings: _____

**RESTRAINING ORDER
ORDER OF EXCLUSION/BANISHMENT**

To the person in ②

The court has granted the orders below. If you do not obey these orders, you can be arrested and charged with a crime. You may be criminally prosecuted in the Superior Court of California, County of Inyo. You may be sent to jail for up to one year, pay a fine up to \$1000, or both. Also, if you fail to comply with these orders, it will result in a violation of Bishop Paiute Tribal law and will be treated accordingly as both a criminal and/or civil violation.

5 STAY-AWAY/EXCLUSION BANISHMENT ORDER

- a. **It is hereby ordered that you (the person in ②) must not enter the exterior boundaries of the Bishop Paiute Reservation, located within Inyo County, California, without first obtaining written authorization from the Bishop Paiute Tribal Council.**

6 ☐ MOVE-OUT ORDER

The person in ② must move out immediately from (address): _____

7 NO GUNS OR OTHER FIREARMS OR AMMUNITION ORDER

- a. The person in ② cannot own, possess, have, buy, or try to buy, receive, or try to receive, or in any other way get guns, other firearms, or ammunition.
- b. The person in ② must:
- Sell to, or store with, a licensed gun dealer, or turn in to a law enforcement agency, any guns, or other firearms within his or her immediate possession or control. Do so within 24 hours of being served with this order.
 - Within 48 hours of receiving this order, file with the court a receipt that proves guns have been turned in, sold, or stored. (Form BPT-DV-800, *Proof of Firearms Turned In, Sold, or Stored, may be used for the receipt*). Bring a court filed copy to the hearing.
- c. ☐ The court has received information that the person in ② owns or possesses a firearm.

8 ☐ OTHER ORDERS ☐ ADDITIONAL PAGES ATTACHED AS PART OF THIS ORDER**9 SERVICE**

- a. ☐ The person in ② was at the hearing or agreed in writing to this order. No other proof of service is needed.
- b. ☐ The person in ② was not present. The person in ② must be personally served a copy of this order.

10 NO FEE FOR SERVICE

The Bishop Paiute Tribal Council is a Tribal public entity, acting on behalf of the Bishop Paiute Tribe, and is entitled to a fee waiver

Date: _____

Dean T. Stout, Chief Judge
Bishop Paiute Tribal Court

**RESTRAINING ORDER
ORDER OF EXCLUSION/BANISHMENT**

Warnings and Notices to the Restrained Person in ②**If you do not obey this order, you can be arrested and charged with a crime.**

- If you do not obey this order, you can go to jail or prison and/or pay a fine. If you do not obey this order, you can be prosecuted in the Superior Court of California. Also, a violation of this order will be treated as a violation of Bishop Paiute Tribal law and will be treated accordingly as both a criminal and/or a civil violation.

You cannot have guns, firearms, ammunition, ammunition feeding devices, including magazines

While this order is in effect, you cannot own, have, possess, buy, or try to buy, receive, or try to receive, or otherwise get guns, other firearms, ammunition, or ammunition feedings devices, including, but not limited to, magazines. If you do, you can go to jail and pay a \$1,000 fine. Unless the court grants an exemption, you must sell to, or store with, a licensed gun dealer, or turn in to a law enforcement agency, any guns, or other firearms that you have or control. The judge will ask you for proof that you did so. If you do not obey this order, you can be charged with a crime. Federal law says you cannot have guns or ammunition while the order is in effect. Even if exempt under California law, you may be subject to federal prosecution for possessing or controlling a firearm.

If You Need to Appear in this Court

If you are cited, subpoenaed, or ordered to appear (whether as a party or witness) in this Bishop Paiute Tribal Court which is located on the Bishop Paiute Reservation, or wish to file or respond to an action in this Court, you must first contact the Bishop Paiute Tribal Clerk for instructions. You may not physically appear without a prior order (permission) of the Bishop Paiute Tribal Council and this Court. Contact information for the Tribal Court Clerk and Tribal Administration is on page 1 above.

Instructions for Law Enforcement**Enforcing the Restraining Order**

This Order is entitled to full faith and credit. The Order is enforceable by any law enforcement agency that has received the Order, is shown a copy of the Order, or has verified its existence on the National Crime Information Center (NCIC), California Law Enforcement Telecommunications System (CLETS), and/or on the California Restraining and Protective Order System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, and the restrained person was not present at the court hearing, the agency must advise the restrained person of the terms of the Order and then must enforce it. Violations of this Order are subject to criminal penalties.

Start Date and End Date of Orders

The *orders* start on the earlier of the following dates:

- The hearing date in item ⑤(a) on page 2, or
- The date next to the judge's signatures on this page.

The orders *end* on the expiration date in item ④ on page 1. If no date is listed, they end three years from the hearing date.

Arrest Required if Order is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code. §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code sections 166 or 273.6.

**RESTRAINING ORDER
ORDER OF EXCLUSION/BANISHMENT**

Conflicting Orders – Priorities for Enforcement

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following priority.

- 1. EPO: If one of the orders is an Emergency Protective Order (Form EPO-001) and it is more restrictive than other restraining or protective orders, it has precedence in enforcement over all other orders.
- 2. No-Contact Order: If there is no EPO, a no-contact order that is included in a restraining or protective order has precedence on enforcement over any other restraining or protective order.
- 3. Criminal Protective Order: If none of the order includes a no-contact order, a domestic violence protective order issued in a criminal case takes precedence in enforcement over any conflicting civil court order. Any nonconflicting terms of the civil restraining order remain in effect and enforceable.
- 4. Family, Juvenile, or Civil Order: If more than one family, juvenile or other civil restraining or protective order has been issued, the one that was issued last month must be enforced.

Clerk’s Certificate

I certify that this *Restraining/Protective Order-Order of Exclusion/Banishment* is a true and correct copy of the original on file in the Bishop Paiute Tribal Court.

Clerk’s Certificate
[seal]

Date: _____

Yolanda Cortez
Clerk of the Court, by _____

Bishop Paiute Tribal Court Administrator/Clerk
, Deputy _____

RESTRAINING ORDER
ORDER OF EXCLUSION/BANISHMENT

1 Thomas L. Hardy (SBN 132706)
2 District Attorney, County of Inyo
3 David A. Christensen (SBN 166130)
4 Senior Deputy District Attorney
5 PO Drawer D
6 Independence, CA 93526
7 Telephone: (760) 873-6657
8 Fax: (760) 878-2283

9 Attorney for Plaintiff

RECEIVED

JUL 17 2023

Inyo County District Attorney

FILED

JUL 18 2023

INYO CO. SUPERIOR COURT
PAMELA M. FOSTER, CLERK
BY DEPUTY

L. Burton

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF INYO

12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 vs.

15 Defendant.

16 No. BCRm-23-69489
17 DA No. 0039763

18 COMPLAINT
19 MISDEMEANOR

20 The undersigned, verifying upon information and belief, complains that in the County of
21 Inyo, State of California, the defendant did commit the following crimes:

22 **COUNT 1**

23 On or about July 12, 2023, in the County of Inyo, State of California, the crime of
24 Disobeying Court Order in violation of Penal Code section 166(a)(4), a Misdemeanor, was
25 committed in that [REDACTED] did unlawfully commit contempt of court by willful
disobedience of a process and order lawfully issued by a court, to wit, a Restraining Order,
issued on 08/09/2021, in Inyo County Superior Court case number SICVDV-2021-66945.

COUNT 2

On or about July 12, 2023, in the County of Inyo, State of California, the crime of Violation
Of A Domestic Relations Court Order in violation of Penal Code section 273.6(a), a
Misdemeanor, was committed in that [REDACTED] did knowingly, and intentionally

1 violate a court order obtained pursuant to Section 6218 of the Family Code of the State of
2 California, to wit, a Restraining Order, issued on 07/28/2021, in Inyo County Superior Court case
3 number SICVDV-2021-66915.

4 I declare under penalty of perjury that the foregoing is true and correct.

5 Date: 7/13/23

Respectfully submitted,

6 THOMAS L. HARDY
7 INYO COUNTY DISTRICT ATTORNEY

8 
9 David A. Christensen
Senior Deputy District Attorney

10 **DISCOVERY REQUEST**

11 Pursuant to Penal Code Section, 1054.5(b), the People are hereby informally requesting
12 that defendant's counsel provide discovery to the People as required by Penal Code
13 Section 1054.3.
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The Yurok Tribe · May 30, 2023

Yurok Tribe, Humboldt District Attorney & Superior Court Launch Program

Yurok Tribe, Humboldt District Attorney and Superior Court Launch Program to Increase Access to Wellness and Reduce Recidivism

Culturally Informed Program Will Improve Community Health in Humboldt County

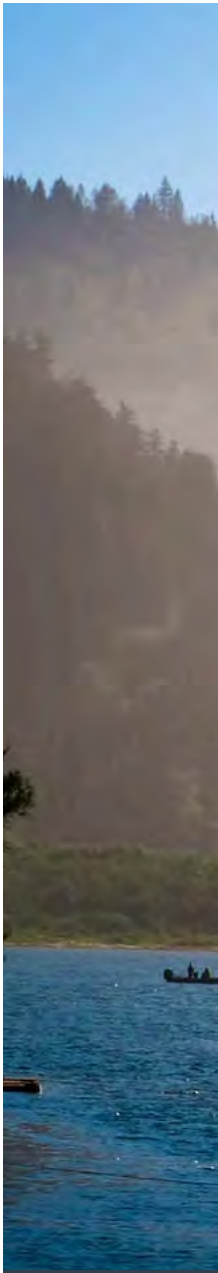
Today, the Yurok Tribe and Humboldt County Superior Court and Humboldt District Attorney's Office signed an agreement that will allow adult Yurok citizens facing certain criminal charges an opportunity to defer prosecution and instead enroll in the Yurok Wellness Court's comprehensive, culturally centered Wellness Diversion program.

"The primary goal of this program is to provide each participant with the ability to choose a new life path and become a contributing member of the community," said Yurok Chief Justice Abby Abinanti. The holistic program will help individuals confront the root cause of their irresponsible behavior and move forward in a good way."

"With the agreement we memorialized today, I anticipate many successful outcomes from the Yurok Wellness Diversion Program a program of opportunity and accountability, guiding eligible participants towards a productive, law-abiding life added Humboldt County District Attorney, Stacey Eads.



Under this agreement, Yurok citizens charged with specific misdemeanor and felony violations of the penal code may be eligible for Yurok Wellness Diversion pursuant to stipulated agreement with the District Attorney or Court initiated misdemeanor diversion via California Penal Code Section 1001.95. The Yurok Tribal Court, along with the District Attorney or Superior Court will determine if the individual is eligible to participate in the Yurok Diversion Program. If the individual qualifies and consents to diversion, the Yurok Tribal Court will develop a tailored wellness plan for the participant and oversee its implementation through culturally integrated case management. The plan may include referrals for addiction and mental health treatment, Yurok cultural engagement activities, educational and vocational training, job placement, housing assistance and additional



types of supportive services if needed. The Yurok Wellness Court will also perform home visits and drug screening. The diversion period may last 6 months to two years.

Throughout the duration of the diversion period, Yurok Wellness Court staff will send monthly reports on the participants' progress to the district attorney and defense counsel. At the end of the diversion period, or upon earlier graduation from the Yurok Wellness Court, the criminal charges will be permanently dismissed. If the participant routinely fails to perform the actions outlined in the wellness plan, the case will be terminated by the Yurok Wellness Court and the original charges may be reinstated by the prosecutor.

The Yurok Diversion Program Memorandum of Understanding (MOU) will open the door for other Tribes to start similar programs. The agreement may serve as a starting point for negotiation and/or a template for tribal diversion terms. Any tribe with a tribal wellness court may seek to begin a tribal diversion program and enter a Memorandum of Understanding with a district attorney and superior court.

Representatives from the Yurok and Hoopa Tribal Courts, Humboldt County Superior Court, Humboldt County Conflict Counsel, Humboldt County Public Defender's Office, and Humboldt County District Attorney's office collectively developed the procedures for Yurok Tribal Diversion Program.

On a case-by-case basis, the Humboldt County District Attorney's Office and Superior Court have been diverting cases to the Yurok Wellness Court since August of 2021. The MOU will streamline the diversion process. To date, four Yurok citizens have completed the diversion program and two more are successfully moving through it.

In addition to Wellness Diversion, the Yurok Tribal Court offers an Adult Wellness program for adult applicants



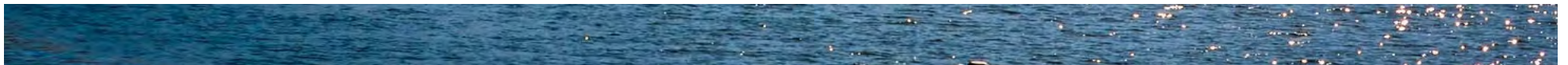
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Yurok Tribe 2025



Traffic and Problems of Public Safety on Tribal Lands

Hon. Maria Lucy Armendariz, Judge of the Superior Court of California, County of Los Angeles

Hon. Richard C. Blake, Chief Judge of the Redding Rancheria and Hoopa Valley Tribal Courts

Traffic Session Backgrounder

Indigenous people in the United States, who face the [highest traffic fatality rates](#) of any racial or ethnic group in the United States. While a 2018 study found that on average 11.28 Americans per 100,000 die per year in traffic accidents – both in-vehicle and as pedestrians. For American Indian or Alaska Native people, the rate was 24.75 per 100,000.¹

Race-Ethnicity	Traffic Fatalities	Population	Traffic Fatality Rate per 100K Population
Hispanic or Latino	5,632	59,639,869	9.4
American Indian or Alaska Native	599	2,420,241	24.8
Asian	557	18,545,428	3.0
Black or African American	5,503	40,860,704	13.5
Native Hawaiian and Pacific Islander	78	586,163	13.3
White	21,572	197,535,202	10.9
Total	36,835	326,687,501	11.3

Table: Michael Brady/Smart Cities Dive • Source: [National Highway Traffic Safety Administration](#) • Created with [Datawrapper](#)

The disparity was especially pronounced for pedestrians. In 2018, the pedestrian fatality rate for American Indian or Alaska Native people was 3.42 times the rate for White people.

Between 2015 and 2019, the American Indian or Alaska Native population had a per capita traffic fatality rate of 30.7 per 100,000 population, twice the 15.0 rate for the Black or African American population, nearly four times the 7.2 rate for White people and nearly seven times the 4.6 rate for Asian people.

¹ See also <https://cdctransportation.org/www.cdc.gov/transportationsafety/native/factsheet.html>.
<https://www.youtube.com/watch?v=NIIdtVzlGUc>

A report prepared by the National Indian Justice Center (NIJC) estimated there are 5,629 miles of road in California within the boundaries of tribal lands.² Many of the tribal lands in California are in remote and inaccessible areas.³ These areas are often poorly served by public transit, and have few sidewalks or bike lanes. This in and of itself creates challenges in ensuring public safety on these roads. In addition, as noted in the NIJC report and elsewhere, jurisdictional issues can make ensuring the safety of these roads even more problematic. Similarly, the attached research briefing shows the problem of speeding related fatalities on tribal lands and the need for better enforcement mechanisms.

Some roads are state owned, some are county owned, and some are owned in trust for the tribe. Many reservations are remote and rugged. Some are close to major urban areas and have major highways running through them. Some get a lot of non-reservation traffic. Some get very little.

Although some tribes have their own police, most do not. In California, as a Public Law 280 state, state and local law enforcement are primarily responsible for traffic enforcement and for criminal investigation, arrests and prosecutions of crimes that occur in Indian country.

In many instances, however, there is little state and local law enforcement presence on the reservation, and tribal law enforcement (where they exist) are the first responders to traffic incidents, including incidents that can impact public safety such as driving under the influence and reckless driving. Currently, the effectiveness of tribal law enforcement and tribal courts to deal with such issues is undermined by the lack of adequate enforcement mechanisms.⁴ If tribal police issue citations, these are often ignored. Currently there is no mechanism to have tribal traffic orders recognized and enforced within the state system either by registration with state courts or through the systems in place under the Department of Motor Vehicles (DMV). Even repeated findings of drunk or reckless driving in tribal court do not affect an individual's California driver's license or record.

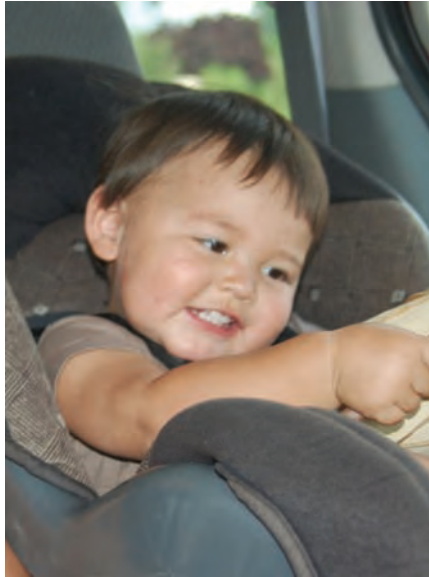
² "Safe Journeys: A Report on Roadway Safety in California Indian Country", National Indian Justice Center, Santa Rosa, 2008 available at <http://www.nijc.org/pdfs/TTAP/NIJC%20Environmental%20Report.pdf> at page 12. See also "Traffic Injury on Tribal Lands in California" Ragland et al., Safe Transportation Research & Education Center, U.C. Berkeley, 2014 available at <http://escholarship.org/uc/item/6v97d95z>

³ See map of Tribal trust lands in California at: <https://www.bia.gov/cs/groups/xregpacific/documents/document/idc1-022501.pdf>

⁴ See discussion of importance of cooperation in traffic issues in "Improving the Administration of Justice in Tribal Communities through Information Sharing and Resource Sharing" Kimberly Cobb and Tracy Mullins, Bureau of Justice Assistance, 2010 available at https://www.bja.gov/Publications/APPA_TribalInfoResourceSharing.pdf

Safe Journeys: A Report on Roadway Safety in California Indian Country

Prepared by
The National Indian Justice Center



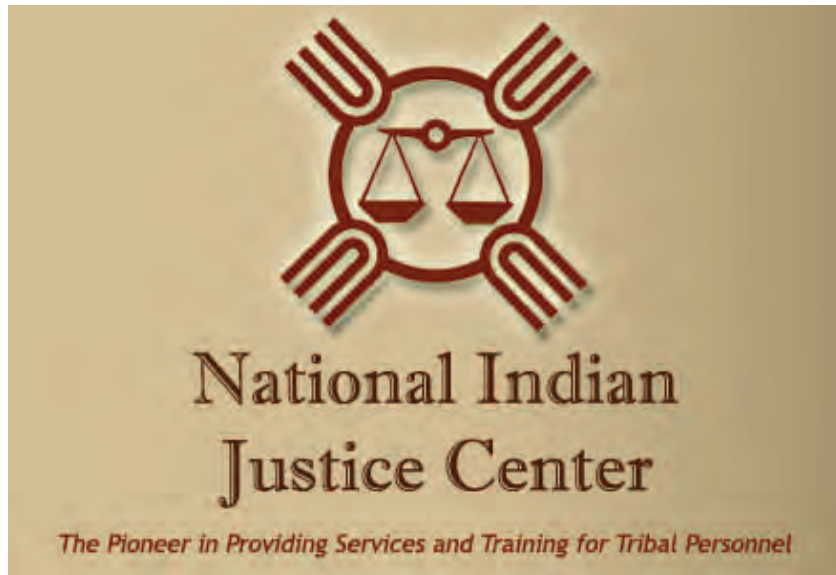
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Safe Journeys: A Report on Roadway Safety in California Indian Country



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SAFE JOURNEYS PROJECT

Research and Analysis Report

Introduction:

This report is an analysis of information compiled by the National Indian Justice Center (NIJC) from various tribal transportation meetings and safety planning workshops with California Indian tribes and other sources. The transportation needs assessments that were to be included for analysis in this report are yet to be completed significantly enough to be used here. Instead of those assessments, we are using other sources, such as in-depth interviews with officials of the Humboldt County Tribal Transportation Commission and the Reservation Transportation Authority Program of Southern California. Both organizations represent inter-tribal groups, providing a detailed profile of safety issues throughout the Indian country of California. Additionally, information collected from a Caltrans inventory survey of Indian Reservation Roads (IRR) for 70 California tribes was examined for this report.

Research Sources:

In the appendices to this report are samples of the resources used to set forth the safety issues analyzed in this report.

During the past thirty-six (36) months, seven (7) outreach meetings were held at the Rumsey Rancheria, the Jackson Rancheria, the Trinidad Rancheria, Shingle Springs Rancheria, Santa Rosa, California, Arcata, California, and Redding, California. These sessions were conducted for various purposes. Three (3) were held for the purpose of providing information to the smaller tribes about the

need to organize coalitions to better serve the transportation needs (including safety) of the tribes of northern and central California. Eventually, the tribes of Humboldt County formed the Humboldt County Tribal Transportation Commission, which seems to be improving transportation resources for northern California tribes. Previously, the southern California tribes had formed a reservation transportation authority, a coalition of eighteen (18) tribes in Riverside, San Bernardino, and San Diego Counties.

The four other outreach meetings provided updates and tribal governance information for the tribal officials in attendance. Self-governance for Indian tribes is always a matter of concern for tribal officials because of challenges posed by other interests. Those interests include county and other local government officials who may question the capacity of tribal governments.

All of these outreach sessions addressed transportation issues generally and not safety specifically. From all indications, the tribal officials struggle with funding issues. The Indian Reservation Roads (IRR) program which provides federal transportation money to tribes is extremely under funded for the tribes of California so they struggle with issues like road maintenance and are ill prepared to deal with safety in an effective manner. However, in these sessions we opened the door to transportation safety on the roads in California Indian country. These outreach sessions were conducted in partnership with the Native American Liaison Branch of Caltrans.

Later in this time period (within 24 months) NIJC conducted four (4) safety planning workshops for the Native American Liaison Branch of Caltrans. These workshops were held in the following locations: The Pechanga Reservation near Temecula, California, the Santa Rosa

Rancheria near Lemoore, California, Redding, California and at the Indian Health Clinic in Arcata, California.

At the two northern California workshops NIJC recruited the participation of officers from the California Highway Patrol (CHP). The participation of the CHP was very effective because communication was established between the local Indian community and the CHP which did not previously exist and certainly does not exist between other Indian communities and the CHP in other regions of California. There are communication barriers that need to be addressed statewide. This is an extremely important relationship which provided tribal government with the opportunity to address the behavioral issues of roadway safety. The CHP is the primary traffic enforcement agency in rural California, including the Indian reservations and rancherias.

Although these planning sessions were intensely advertised for the Santa Rosa Rancheria and the Pechanga Reservation, the turnout was small. The story of roadway safety in Indian country has to be told better and understood. The death rate on Indian reservation roads is on the rise. However, tribal leaders may be deferring the roadway safety problem to state authorities because of Public Law 280, a federal statute that will be discussed in detail later in this report.

In the original proposal of this grant NIJC stated that it would analyze for this report forty transportation needs assessments that were to be conducted by Winzler and Kelly Engineers (W & K) for 43 California tribes. Unfortunately, W & K did not perform this work to the satisfaction of Caltrans and had to be replaced. The new subcontractor has completed only a handful of the needs assessments. However, in reviewing the assessments for this report that

have been completed NIJC has concluded that the assessments provide only road improvement plans with regard to safety. Therefore, this report will rely heavily on the above described meetings held and other research sources including information from Caltrans, the CHP and commentary by tribal officials. As this report will demonstrate, safety on the roadways of California Indian country is a complex matter that deserves much more attention than it has received in the past.

Political Considerations

In 1953, the federal government embarked on a new Indian policy that called for the eventual elimination of federally recognized Indian tribes and their members. This began with the enactment of House Resolution 108 which set forth the policy of “Indian Termination.” A legislative companion to this congressional policy statement was the passage of Public Law 280 which set in motion the “Indian Termination” process. Public Law 280 called for five (5) states and one (1) territory (Alaska) to be mandatory Public Law 280 states to which the federal government would transfer its criminal jurisdiction and some adjudicatory civil jurisdiction but no civil regulatory jurisdiction. The statute did not extinguish any tribal jurisdiction over these matters; however, these five states and the territory of Alaska at that time were the starting points for “Indian Termination”. California was one of these mandatory states; the tribes in California had no choice in the matter. They were subject to Public Law 280 and “Indian Termination”. Although in 1953 Congress did not extinguish tribal justice systems in California, there was no federal funding forthcoming to develop these systems. Orderly Indian termination was supposed to take care of the justice issue.

In 1958, Congress enacted the Rancheria Act of 1958 which called for the termination of 41 rancherias (small Indian reservations) in northern and central California. The Bureau of Indian Affairs (BIA) was able to convince 39 tribes to terminate their status as federally recognized Indians and to accept their homes and small acreages in fee simple and to participate in the “Indian Relocation” program that moved Indians to major cities for vocational training and employment. The relocation program was a dismal failure, effectively stranding a generation of Indians in the ghettos of the big cities.

However, the rancherias were forever changed. Some Indians sold their fee lands. Some kept them in private ownership. In the process of terminating the rancherias the BIA either sold or merely transferred the rancheria roads to the counties in which the rancherias were located. The heads of household of each rancheria signed a distribution plan in which they agreed to the termination of their federal recognition; the BIA agreed to see that the roads were maintained by the county; that sewer systems were installed; and that adequate water was provided to the terminated rancherias. After 15 years, the BIA had not fulfilled its promises in the distribution plan, and litigation was pursued. In the first case (*Tillie Hardwick v. U.S.*) seventeen (17) rancherias, their distributees and their heirs were restored to federal recognition. Other cases followed. The BIA had broken its promises; the distribution plans were breached.

Over a span of 55 years from 1953-2008, the state of California through its county governments has wielded some governmental power in California Indian country. The counties own many of the rancheria roads today, but often these counties do not adequately maintain those roads. The CHP has primary traffic enforcement responsibilities on all public roads in California and the county sheriff is responsible for criminal investigation, arrests, and prosecution of crimes that occur in California Indian country. However, law enforcement has

been problematic in California Indian country and Public Law 280 has not helped over the years.

If “Indian Termination” had worked, there would be no Indian country in California today. However, termination failed, leaving political gaps in California Indian country. Today the wealthy gaming tribes have the means to pay for the county sheriff to patrol reservation roads and enforce tribal statutes on the reservations and rancherias. However, Public Law 280 is still the law; so the state already has law enforcement jurisdiction. Who then is responsible for assuring safety on Indian country roads in California? What are the immediate and long term transportation safety needs of Indian country in California? This report attempts to answer these questions that harbor complex issues.

Roadway Safety Issues

As noted earlier, many of the rancheria roads in California are owned by the counties in California because of “Indian Termination”. Although the rancheria lands were restored to federal trust status, the roads are still owned by the counties unless agreements were negotiated between certain tribes and counties. On Indian reservations, the roads are all counted in the Indian Reservation Roads (IRR) inventory even though the roads may be owned by the state or county.

However, the BIA is seeking to eliminate roads owned by the state or county from the IRR inventory nationally. If this happens, maintenance would be charged to the county or state and IRR funds would no longer be eligible for maintenance purposes. The IRR funding is so lean that maintenance needs go unserved. But since the Indian country roads are within the

exterior boundaries of the reservations and rancherias, state funding may not be used to improve maintenance of the roads.

NIJC has been informed that winter storms often cause road washouts and surface potholes on paved and unpaved facilities on California reservations and rancherias which deteriorate the roadways if not properly repaired. Often, adequate repairs are not made. This is a chronic problem that occurs on IRR facilities on California Indian reservations and rancherias. Driving safely is seriously compromised by these conditions and matters become worse each year. Lives are put in jeopardy by these unsafe road conditions.

In conversations, discussions and interviews at the outreach meetings and safety planning workshops NIJC was informed that transportation facilities improvements were seriously needed in California Indian country: bike/walk paths, sidewalks, bike lanes, signage, roadway marking, and roadway expansion/extensions. These improvements are stalled because funding for California reservation roads is inadequate. The tribes of California receive far less IRR funding than tribes from other regions of Indian country, nationally. Some of this is caused by inter-tribal politics. The bigger reservations get a bigger slice of the pie. Despite the Indian population in California being the largest nationally, the IRR inventory is less than the large tribes in other states. California has 108 small tribes with small road inventories.

Although there is no national requirement for roads to meet minimum safety standards for signage, road geometry and surface conditions, the fact that reservation/rancheria roads are underfunded puts them below any concept of minimum safety standards. These roads are often the sites of major/minor accidents that go unreported here in California Indian country.

In California, the poor conditions of the tribal roads, bridges, and the lack of transit systems jeopardize the health, safety, security, and economic well-being of tribal members and the traveling public. Tribal communities lack the resources and adequate funding to improve the unsafe road conditions and promote public safety. The transportation needs are manifested in poor roadway conditions and lack of educational programs on road safety. These problems are compounded by underreporting of accidents and poor traffic safety enforcement on California reservations and rancherias. For 2008, the 108 Tribes in California only received 1.88 percent of the funding from the Indian Reservation Roads (IRR) Program allocation. By increasing funding to California tribes, funding for transportation would also increase throughout the California region and safety programs would have a chance to be effectively implemented.

Statistical data that was analyzed to support this report came from the Winzler and Kelly (W&K) Technical Report for 2008 (an IRR inventory funded by CalTrans). The report inventoried 77 of the 108 tribes stating that over 70 percent of the tribes in California were served by Caltrans under this project. It looked at the existing conditions and made suggestions for continued improvement. The report also noted that as many of the tribes begin to add transportation facilities e.g. roads, bridges, piers, airports, etc to the IRR inventory. If the BIA is successful eliminating state and county roads from the IRR inventory, the result would be a reduction in the California tribal road inventory and less funding for the California tribes. Presently, there are a possible 5,629 miles of road that have been identified by California tribes to be included in the inventory. However, these miles have not been added into the inventory to date either because tribes have not provided the documentation needed for final processing or the BIA has not given final approval to include these roads. In addition, statistical information was gathered from experts in the field from Caltrans. [See Appendix A]

A. Public Law 280 Issues

Law Enforcement

There is confusion over tribal sovereignty rights and the lack of memoranda of understanding that have been established with the appropriate state and county agencies. Many of the reservations/rancherias do not have the financial resources to operate their own tribal police departments. In those instances private roads may not be patrolled by any law enforcement officers. The CHP needs to work with California tribes to create traffic patrol of tribal public roads to ensure public safety and to aggressively enforce traffic rules and to provide education to local tribal communities about roadway safety.



Like other disadvantaged populations, the California Indian communities generally distrust the police. Tribal cultures and attitudes may affect the effectiveness of tribal police departments that have yet to be established on most reservations in California. Tribal police departments must contend with a number of issues including lack of adequate equipment, manpower, and training. Many tribes do not have tribal traffic codes making enforcement of traffic laws difficult. Also, the judicial attitude is important. When officers who make stops and arrests see them routinely dismissed by the court, they can become hostile to the court and indifferent to their own work.

Educating the tribal public by law enforcement on the increased survival chances just by wearing safety belts has not been an easy sale. Often the information falls on deaf ears. Enforcement of these types of laws has not, in the past, been a priority for tribal police in other

states. The BIA Indian Highway Safety Program has tried to work with tribal police to provide needed training of officers.

Roadway Ownership

Historically, California tribes have been underfunded by the IRR, which results in inequities, intertribally in California. Typically, it has been the

gaming tribes that have the financial resources to match the funding issued by the BIA that have been able to improve their roadways and implement educational programs to improve safety. Although transportation agencies such as Caltrans and the BIA transportation department are trying to work together to improve these conditions, some California tribes remain hesitant about making their roads public. They fear that by participating in roadway assessments which IRR

performs, sovereignty rights may be impacted. Additionally, some leaders are misinformed and tend to lock themselves into a superficial dependence on the sovereignty argument.



B. Roadway Conditions and Safety Issues

Surface Maintenance

Some of the problems that California tribal roads face can be attributed to a need for roadway improvement and maintenance. Some tribal roadway fatalities can be prevented just by making improvements to unsafe roadways. Since many of the tribes are located on rural lands, some of their roads are located on steep terrain and gravel surfaces. Although the



2008 IRR report issued by Winzler and Kelly states that 4,090 miles in 2008 are paved roads and only 487 miles unpaved, this report does not include the 15 tribes which were not inventoried, nor did it include all of the roads on these reservations. The report concluded that California “lacks parity for California tribes in comparison with other tribes throughout the nation.” [See Appendix B]

There is a strong need to improve roadway conditions on California Indian reservations because road use is steadily increasing with non-Indians frequenting casino’s and tribal members moving back to the reservations. Existing tribal roadways present unsafe conditions that compromise public safety because of unpaved surfaces, a lack of appropriate signage and traffic control devices, a lack of sidewalks and bike lanes, and an absence of pedestrian walkways. Often, California reservation roads are not maintained which can lead to major accidents. These tribal roads become deadly when weather conditions are bad.

Roadway Expansion

A major concern for the drivers who use Indian reservation roads is that they are often traveling on narrow roadways and bridges that are in dire need of expansion and widening.

Two way roads often amount to one-way roads with little or no room to pass. These tribal roads need to be expanded to allow safe traveling for drivers who reside on the reservation, work on the reservation, or who merely visit the reservation.



At times reservation roads are located on steep terrain with dangerous embankments. These hazardous conditions may result in fatal accidents during unruly weather conditions and/or when a driver is distracted. Some accidents can be prevented if the roads are equipped with guard rails, reflectors, and other safety devices that guide drivers through dangerous environments caused by bad weather and existing conditions that are already dangerous and made worse by weather conditions.

Another concern are the tribal roadways conditions that connect some reservations. Some tribal members travel between reservations and rancherias because they have family living on neighboring reservations. These roads may not be paved and may present multiple hazards for drivers. The driving conditions can be extremely dangerous during seasonal conditions and there is a great need for maintenance and improvement of these reservation

roads. Improving existing tribal roads and building new roads and bridges are just one part of the long-term solution to traffic safety in Indian country.

Turn Out, Turn Lanes, and Passing Lanes

Another safety issue which could improve reservation roads and increase safety are turn outs, turn lanes and passing lanes. Since some tribal roads are very narrow and have not been expanded, these facilities do not have the capacity



to move the current volume of vehicle usage that exists today and that which is projected for the future. Since many of the drivers on reservation roads are commuting to state highways as they exit the reservation, sometimes these vehicles are merging into high volume of off-reservation traffic. Due to the lack of appropriate turn outs, turn lanes, and passing lanes traffic congestion can build up, which may create unruly and unsafe driving conditions. Providing passing lanes would enhance traffic flow and increase capacity by giving slow moving vehicles a lane to travel in and allow mainstream traffic to flow at posted speeds.

Pedestrian Transportation (Sidewalks)

Due to unpredictable gas pricing and the need to protect the environment from pollution, there is a need for alternative modes of transportation. Walking is healthy but needs to be safe.



Sidewalk accessibility for pedestrians is increasingly becoming a community health issue, as well as a safety concern. Historically, reservation roads did not include sidewalks or bike paths. This resulted in people just walking or biking along side the road without safety being part of the roadway design.

Pedestrian-motor vehicle collision deaths for Indian youth are almost 4 times



than that for all races combined. The majority of American Indian pedestrian fatalities occur not just on the reservation but in rural areas, on major roadways that lead to reservations and lack pedestrian facilities but are just outside the reservation boundaries. These accidents may involve alcohol abuse on the

part of the pedestrian or driver. Although reservation pedestrians include all segments of the population, people who are elderly, low-income, have disabilities, and children of school age, tend to be most likely to rely on pedestrian travel. The W& K inventory study concluded that the majority of roads inventoried or that are near tribal lands do not provide pedestrian and bicyclist facilities. [See Appendix B]

Bicycle Routes



California reservation roads are in need of expansion to include:

- Bicycle Pathways: physically separated from motorized vehicular traffic.
- Bicycle Lanes: located on roadway shoulders and designated by striping, signs, and pavement markings.

- Bicycle Routes: provide shared use with motor vehicle traffic and is identified by signage.

By including bikeway improvements and bicycle facilities, reservation roads in California could be promoting healthy living and transportation alternatives, which are currently not being promoted in California Indian country. Expanding the tribal roads and marking them could decrease the bicyclist fatalities that are a result of distracted driving and poor roadway design. Caltrans is trying to work on a strategy to inventory the gaps in shoulder facilities for bicyclists, as well as improve and create a methodology to determine the need and focus the priority. California tribes have an opportunity to collaborate with Caltrans to plan for road improvements that include bicycle and pedestrian safety. This opportunity needs to be employed because lives can be saved and permanent injuries avoided.



Signage

Many reservation roads lack the appropriate signage to alert drivers of the safe speed for the roads that they are using, but also of pedestrian crossings and to stop and yield. These types of improvements can easily be made on reservation roads to increase safety and prevent fatalities. Reservation pedestrians, bicyclists, and the vehicle drivers are negatively affected by the lack of signage on reservation roads.



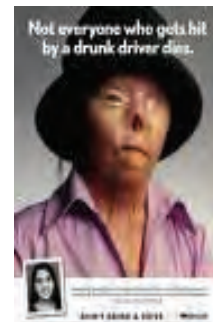
Public vs. Private Roads

Several tribal governments choose not to include some of their roads on the IRR inventory. By designating certain roads private, they exclude the public; however they also may exclude public funding for road maintenance and traffic enforcement by the CHP. Some tribes feel that by allowing certain roads to be inventoried makes them public which increases the amount of traffic by non-members over whom they have no criminal jurisdiction. By keeping the roads out of the inventory, they keep them private. The problem with keeping them private is that these tribes do not receive the funding that is allocated by the BIA to improve road maintenance for these roads. Private roads also lack data to show possible hazardous conditions. Tribal leaders need to work with the BIA and Caltrans to understand the importance of having all unsafe reservation roads included in the IRR inventory. Working with federal and state governments is certainly exercising tribal sovereignty and as long as tribal governments have a comprehensive approach to the transportation issues, there should be no threat to tribal sovereignty.

C. Behavioral Issues

Driving Under the Influence in Indian Country

There are many driver behaviors that lead to accidents on tribal roads and all public roads for that matter. There is substantial evidence that of the leading causes of deaths on Indian reservation roads is related to alcohol abuse. It is estimated that approximately 75% of accidents on reservations are alcohol related.



This statistic is alarming and to a certain extent may be unreliable because there is a general presumption that accidents involving Indians also involves alcohol. Keep in mind that reservation traffic accidents are under-reported or not reported at all. If there is no traffic accident reporting to the tribal government, it is difficult to obtain reliable data about tribal member involvement in traffic accidents investigated by state officials.

The Centers for Disease Control (CDC) revealed in a recent study that 11.7 percent of deaths among American Indians and Alaska Natives between 2001 and 2005 were alcohol related. Some tribal governments prohibit the sale and distribution of alcohol on-reservation. Tribal members then must travel to adjacent communities to purchase alcoholic beverages. Because of the remoteness of some reservations, the closest municipality could be up to two or more hours away. Tribal members make the journey to the bar or liquor store, sometimes, drink and then must make the long journey home. The roads may not be patrolled and this can lead to driver and pedestrian fatalities. Tribal leaders should study whether or not prohibition versus legalization benefits their communities.

Tribal officials in California need to work collaboratively with the CHP and county authorities to ensure that the public expectations are met regarding driving under the influence. Prevention needs to start with tribal councils strategizing and implementing programs that are educational. Tribal governments need to establish a zero tolerance attitude about the behavioral issues of the DUE and transportation safety. Additionally, there must be judicial and prosecutorial training to complement the efforts of law enforcement. Although alcohol related fatalities have been reported, other behavioral issues have not been tracked or examined. There is a growing need to educate youth



about the fundamentals of driving and implement effective driver education classes to teach youth about the safety precautions before they get behind the wheel or receive a license, especially since many alcohol related accidents involve youth. In these times of great economic crisis public schools have had to endure major budget cuts. One important spending cut has been the reduction in driver education programs in California high schools which are attended by California Indian students. If families can afford private driver training then the student get the training, otherwise they drive without a license. Tribal governments must accept a responsibility for driver training for youth where it is necessary.

Reckless Driving

Roadway conditions and maintenance are only one part of the problem in understanding the transportation safety needs on tribal lands and roads.

Often tribal members lack the access to information and education to understand the importance of safety measures they can take to prevent fatalities on reservation roadways.



For some drivers it comes down to understanding the value of safety and taking the precautionary measures to ensure that drivers, passengers, and pedestrians are not at risk. It is important for tribal leaders to be committed to developing, promoting, and implementing preventative measures for tribal members to gain the education and training needed to change behavior that may be jeopardizing the lives of those who use the reservation roadways.

Driving Without A License

Another concern is about Indians who are driving without a license because it has been suspended or revoked or they just did not bother to get a drivers license. In many instances these drivers are unconcerned about the safety issues as well. This problem maybe learned behavior from the adults in the family. If family members don't stop driving once a drivers license is suspended, there is no incentive for the young people in the family to follow the rules. There is a definite need to educate youth about the fundamentals of driving and implement driver education classes at the tribal government level to teach youth about driver safety before they get behind the wheel of a car, especially since many alcohol related accidents involve youth. Although there is no available data to support this conclusion, driving without a valid drivers license is a problem in California Indian country.



Passenger Safety

a. Seatbelt Usage

California Indian reservations continue to struggle with effective programs aimed at increasing and sustaining safety belt usage rates. Seatbelts are the most notable safety device



that has been proven to save lives! There is clear evidence that seatbelts save lives on the highway; the problem is that drivers and passengers who violate seatbelt laws tend to make excuses for why they are not using their seatbelts. In some cases, the vehicles may not be equipped with the appropriate safety devices to accommodate all

passengers. Some tribal members may have one car per family and it is mostly used for transporting from work, to school, and to the market. In many instances, the unreasoning behind not using a seatbelt is that it is not needed. It is imperative that not only the attitudes of tribal members be changed, but also the attitudes of tribal police, council members and the tribal court system. This is why educational programs to promote safety for drivers and passengers are important to correct and change behavior that continues to be problematic and causes fatalities.

b. Child Safety Seats

Another safety device that can prevent fatalities and save the lives of Indian children in



California is the safety seat for children. Even though parents use this device, in many instances it is installed incorrectly putting the child at great risk. Again, this is a problem with behavior because many parents don't appreciate the value in safety devices in vehicle transportation. Fear is another factor why Americans Indians don't

buckle up. Most fear stems from the belief that the children will be trapped in the event of a crash. Only through education about primary seat belt laws and aggressive enforcement can changes in attitude and behavior be made. Saving lives through the usage of safety belts and child safety seats has to become a priority of the tribal leadership if it is to make a difference in Indian country.

NHTSA's highly effective "**Click it or Ticket**" model has been shown to increase safety belt usage numbers in states that have implemented the model. [See Appendix C]



Driver Responsibility and Accountability

Among other things, drivers need to start taking responsibility for their actions. Tribal cultures and values affect the way that roadway safety issues are viewed by Indian reservation drivers and pedestrians. Unfortunately, this is corroborated by the tribal councils lack of attention to the education of California Indian communities concerning roadway safety. It is important for tribal councils' to support the efforts to improve safety conditions on reservation roads.

Traffic Enforcement

Many of the reservations do not have the financial resources to have their own tribal police. In those instances, the CHP should be patrolling the tribal public roads to ensure public safety and work to aggressively to enforce traffic rules pursuant to its enforcement responsibility under Public Law 280. Statewide, some CHP officers work with tribes, others don't. Add to this tribal sovereignty issues and we become entangled in a web of jurisdictional confusion and conflict.



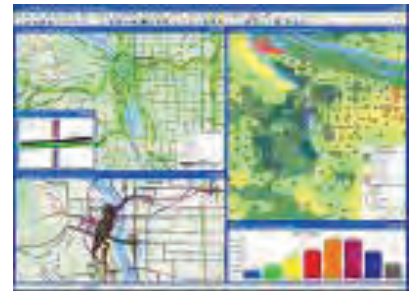
Also, educating the tribal public on the increased survival rates in accidents by just wearing seat belts has not been adequately pursued. It often falls on deaf ears. Enforcement safety laws has not, in the past, been a priority for tribal police. The BIA Indian Highway Safety Program has tried to work with tribal police with not much success. [See Appendix D]



Interagency Communication and Data Sharing

Although, this report shows that only 15 tribes did not participate in the Winzler and Kelly inventory survey, it does illustrate the lack of reporting of roadway accidents and traffic violations. In tribal communities, collecting accurate data is made more challenging by underreporting of traffic injuries and accidents due to people driving under the influence, without auto insurance and driving without a license. Reservation reporting is non-existent. Tribes are also not mandated to submit traffic data, so traditionally tribes have not collected traffic accident data.

Caltrans is attempting to implement a system for maintaining traffic records, but tribal officials need to work out their sovereignty issues in order to get to data sharing. The BIA Indian Highway Safety Program has long maintained the position that tribes should share their data. In many cases these accidents on remote roads in rural areas go unreported, so they end up not having data that is up to date. Tribal officials need to be able to establish trust and work to improve intergovernmental communication in order to provide accurate data on roadway accidents and traffic violations.



D. Recommendations for the Future

Education

Education is crucial to raising awareness of safety issues among tribal members, including young children, teens, parents, tribal leaders, and others. Teens need to be educated

about driving responsibly and safely, seat belt use, alcohol and drug issues, and driving on tribal versus nontribal lands. Young children and parents need to be educated about seat belt use and child passenger safety seats. Driving under the influence must be examined in the educational context. Tribal leaders need to promote the importance of safety. They need to know they should support and enforce existing laws and lead in the implementation of new laws related to safety. Tribal leaders play a central role in developing safety initiatives. Tribal police officers need to be educated about the proper use of seat belts and child safety seats, as well as traffic code enforcement. Tribal judges need to understand the importance of properly enforcing safety laws and they should not be allowed to reduce penalties for personal reasons. If violators do not feel like they are going to be punished for their actions, they will continue to break the laws and not value the importance of safety on reservation roads.

Some educational and training strategies that can be implemented to improve the understanding of safety issues:

- Community outreach programs to raise roadway safety awareness.
- Special events to target age groups, marketing and media campaigns such as billboards and public service announcements, and training courses for tribal members, parents, police, and teens.
- Education on the value of safety through resources provided at school such as mock crashes, youth councils on safety, and presentations about roadway and driving safety.

- Imposing effective penalties for youth who drive under the influence.
- An analysis of roadway safety materials available on the internet.

Many parents do not appreciate the need for safety devices, nor understand how to use them properly. Some educational and training strategies to improve their understanding of safety include:

- Safety messages and safety handouts showing proper use, as well as encouragement from nurses and doctors at the Indian Health Clinics on the safety practices and their value
- Tribal members should be encouraged to take an interest in the importance of roadway safety in their community.

By convincing tribal councils to be dedicated to roadway and behavioral safety issues, tribal communities will become educated about roadway safety and saving lives.

Interagency Planning and Communication

Tribal governments need to identify ways in which they can better achieve a working relationship with local, state, and federal transportation agencies. Road safety programs for California tribes need to receive increased funding for safety on reservation roadways. Tribes need to work with the state to improve memoranda of understanding about reservation roads and providing services such as traffic enforcement and maintenance. There is a need to improve

the level of communication and exchange of information between tribal and state enforcement agencies. Tribal leaders need to work with state officials to determine how they can eliminate the confusion for the CHP to provide enforcement services in California Indian country. There is a lack of clarity about jurisdiction regarding state and tribal law enforcement. Tribal governments need to establish a statewide communication program between law enforcement, fire, emergency services and other local agencies.

Data Sharing

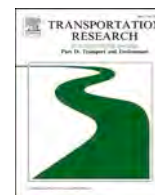
Many roadway conditions and accidents go unreported due to lack of capability to collect data for California Indian country on accidents and traffic violations. Tribal leaders need to work out agreements to promote data sharing to improve reservation roads and the safety for all who use them. Information needs to be obtained so that there is complete and accurate data about reservation roadway conditions and behavioral issues.

Suggestions to improve the data are establishing the use of geographic positioning systems (GPS) to pinpoint crash data. Tribal members must first understand the importance of reporting the data, and tribal councils need to establish data collection systems in Indian country for receiving accident reports. Agencies need to work out strategies for sharing data and work on a coordinated effort to plan for improving roadway infrastructure.



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An exploration of pedestrian fatalities by race in the United States

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ABSTRACT

Black and Native American pedestrians are disproportionately killed in the US, yet relatively little is known about how fatal crash patterns differ between races. Our multinomial logit analysis of six years of US pedestrian fatality data (2012–2017) and built environment and census data reveals notable differences between races compared to the baseline of White pedestrians, including that Black and Native American pedestrians were significantly more likely to have been killed in darkness, Black and Hispanic pedestrians under age 16 were significantly more likely to have been killed, and Asian pedestrians age 65 or older were significantly more likely to have been killed. Importantly, models with crash, built environment, and population data suggest critical connections between roadway design and population patterns that are risk factors for all pedestrians, but disproportionately affect certain races. Our findings highlight important risk factors for pedestrian safety and provide several areas for future research.

1. Introduction and background

Pedestrian fatalities increased at an alarming rate over the last decade, culminating in a nearly thirty-year high in 2018 (Retting, 2020) and remaining high in 2019 and 2020 (National Highway Traffic Safety Administration (NHTSA), 2021). In the same timeframe (2009–2018), the proportion of fatalities comprised of pedestrians increased from 12% to 17%, another disturbing trend. Moreover, the population burden of pedestrian fatalities is not equally distributed: Black Americans and Native Americans are overrepresented within pedestrian fatalities and injuries on a per-capita basis (Retting, 2020; Kaufman & Wiebe, 2017; Bellis et al., 2021; Hamann et al., 2020) and at a neighborhood-level (Mansfield et al., 2018; Schneider et al., 2021; Roll, 2021; Marshall & Ferenchak, 2017).

Yet much of the research on pedestrian safety and race to date has been conducted in a bivariate manner and lacks a deeper investigation into how race interacts with common crash attributes (Retting, 2020; Marshall & Ferenchak, 2017; Zaccaro et al., 2019; Tefft et al., 2021; Schneider, 2020; Schmitt, 2020). A few studies have taken a deeper look at race, income, and vehicle volumes, finding that Black, Indigenous and People of Color (BIPOC) Americans are more likely to live in areas with a higher percentage of wider, faster roads and a lower percentage of pedestrian improvements (Schneider et al., 2021; Roll, 2021). Other studies have documented trends specifically related to Native Americans and traffic safety, such as the higher prevalence of alcohol involvement in pedestrian fatalities (LaValley et al., 2004).

However, no study to our knowledge has examined how common crash correlates are associated with races in comparison to one another while using multivariate analysis to control for other important factors. For example, does darkness remain a significant predictor of pedestrian fatalities for various races after pedestrian alcohol usage is accounted for, given that the majority of alcohol

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consumption occurs at night? Do roadways with four or more lanes remain significant once speed limit and roadway type have been controlled for? Does race remain a significant predictor once built environment factors have been accounted for? The need for greater clarity about pedestrian safety trends specific to each race is important for identifying larger systemic factors as well as potentially culturally-specific factors that may be important for countermeasure development. For example, evidence of racial bias in driver yielding (i.e., lower yielding rates for Black as compared to White pedestrians) should inform road safety solutions and countermeasure development to mitigate the increased risk for Black pedestrians (Goddard et al., 2015; Coughenour et al., 2017).

This study uses data from the Fatality Analysis Reporting System (FARS) and the U.S. American Community Survey to evaluate correlates of pedestrian fatalities in the United States and help fill the gap in understanding about pedestrian fatalities and race. We find significant differences between races in terms of certain key crash correlates and identify trends that can be a foundation for future research. Our results also underscore the importance of including contextual information to allow for a more robust interpretation of crash modeling results.

2. Data and methods

2.1. Data sources

This analysis combined data on pedestrian fatalities with data on sociodemographic characteristics, commuting behavior, and built environment characteristics from the surrounding neighborhoods at the census tract level.

Table 1
Summary Statistics of Census Data¹.

Variables	Mean (%)	Median (%)	Std. Dev. (%)	Min (%)	Max (%)
Transportation-related Variables – Census (<i>n</i> = 31,696)					
Walk to work	3.0	1.4	5.4	0	90.9
Take transit to work	5.6	1.5	11.0	0	100
Sociodemographic Variables - Census					
<i>Race/Ethnicity (<i>n</i> = 31,711)</i>					
Asian alone	4.9	1.6	9.3	0	91.4
Black alone	17.7	6.8	24.3	0	100
Hispanic	22.6	11.9	25.0	0	100
Native American alone	1.2	0	7.5	0	100
Native HI/Pac Islander alone	0.2	0	1.2	0	46.9
Other alone	0.2	0	0.9	0	35.4
White alone	50.9	54.2	30.9	0	100
<i>Age (<i>n</i> = 31,711)</i>					
Under age 18	22.8	23.0	6.9	0	61.6
Age 65+	14.5	13.6	7.4	0	100
<i>Zero vehicle households (<i>n</i> = 31,689)</i>					
Below poverty (<i>n</i> = 31,677)	15.1	12.1	11.9	0	100
2x Below poverty (<i>n</i> = 31,677)	6.2	4.4	6.3	0	100
Disabled (<i>n</i> = 31,704)	13.8	13.1	5.7	0	100
Variables	Mean	Median	Std. Dev.	Min	Max
Built Environment and Density Variables – SLD (<i>n</i> = 31,771)					
Ave. population density (household units/acre)	4.3	2.1	11.3	0	618.3
Ave. employment density (jobs/acre)	5.8	1.3	38.0	0	2826.7
Ave. auto-oriented network density ²	1.6	0.7	2.3	0	33.3
Ave. multimodal network density ²	3.2	2.1	4.0	0	46.1
Ave. pedestrian-oriented network density ²	11.8	11.9	7.5	0.1	51.0
Ave. street intersect density ³ (no auto-oriented)	79.7	68.5	68.6	0.8	1165.5
Ave. auto-oriented street intersect density ³	3.8	1.2	7.7	0	236.1
Ave. distance to nearest transit stop (meters)	482.8	449.9	245.7	57.6	1207
Ave. proportion of CBG employment within ½ mi of transit	7.6%	0%	22.4%	0%	100%
Ave. aggregate frequency of transit service/sq mi	272.4	19.3	1542.7	0	36,085.6
Ave. National Walkability Index score ⁴	10.4	10.7	4.1	2.9	19.7

1 Statistics based on tract-level values for the census data and averages of block-level data within each tract for SLD data. Data are not weighted on a population basis.

2 See Chapman et al., 2021 for full definitions. Briefly, network densities defined as follows: auto-oriented = miles of roadway 55 mph or higher (two-way) or 41–54 mph (one-way) where autos are allowed but pedestrians are prohibited per square mile of the tract; multimodal = miles of roadway 31–54 mph (two-way) or 21–30 mph (one-way) where pedestrians are allowed per square mile of the tract; pedestrian-oriented = all other miles of roadway 21–30 mph where pedestrians are permitted and paths where cars are prohibited per square mile of the tract.

3 Intersection density = number of intersections per square mile.

4 A weighted combination of intersection density, proximity to transit stops, employment and household data. See Chapman et al, 2021.

2.1.1. Pedestrian fatality data

We used 2012–2017 pedestrian fatality data from the Fatality Analysis Reporting System (FARS) (NHTSA, 2018). FARS data represent all people killed by a motor vehicle on public roadways in the United States, capturing those who die up to 30 days after a crash. As is NHTSA custom, our analysis excluded pedestrians who used a personal conveyance (including wheelchairs and skateboards). Our dataset included 32,059 observations of pedestrian fatalities over the six-year period. This number shrank to 30,237 in the regression models due to missing observations for crash data of interest (e.g., speed limit) and geolocation. The 2017 data used in this analysis were preliminary, though we expect only small changes from finalized FARS data.

Note that the crash data reported in FARS indicate a variety of potential contributing factors and circumstances that are meant to help us understand trends in pedestrian fatalities but not necessarily to establish fault.

2.1.2. Sociodemographic and commute behavior data

We supplemented the FARS data with data from the 2013–2017 (five-year) American Community Survey and the most recent EPA Smart Location Database (“SLD”) (Chapman et al, 2021) for key population and built environment variables, respectively. Census data represent the percentages at the census tract level from the tract where the crash occurred, and SLD data represent an average of the built environment values at the tract level. Table 1 shows the summary statistics for the census and SLD data in the sample.

2.1.3. A Note about exposure data

Exposure is an important factor for explaining the prevalence of pedestrian fatalities experienced by different racial groups at particular times of day, on particular types of roadways, and in association with other characteristics. Unfortunately, there are no nationwide datasets with the type of spatially- and temporally-specific pedestrian exposure information necessary to control for this factor in our analyses of these characteristics. While we were able to use walk-to-work data from the American Community Survey as a census-tract-level variable in our analysis, this source only represents the proportion of workers who commute by walking on a regular basis, so it does not account for occasional work commuting, walking to and from transit, or walking for shopping, recreation, or other non-work purposes.

2.2. Analysis

Our analysis used the variables from FARS, the census, and the SLD to “predict” the likelihood that a fatality belonged to one of the various BIPOC racial categories as opposed to the baseline category of White. We used White as the baseline because it was the racial group with the largest number of pedestrian fatalities over the six-year period ($n = 15,845 - 49\%$ of the sample).

Our dependent variable was a categorical race variable with the following values:

- White alone (“White”)
- Black or African American alone (“Black”)
- American Indian or Alaska Native alone (“Native American”)
- Hispanic/Latinx (“Hispanic”)
- Asian alone (“Asian”)
- Other alone (“Other”)

In this coding, “alone” means both no other races and non-Hispanic. While race and ethnicity are not exclusive, this coding is supported by census data that show that the large majority of people identifying as White, Black, Native American, and Asian alone (from 80 to 99%) identify as “not Hispanic or Latino.” This coding also allows us to compare our results to other research on pedestrian safety and race/ethnicity that uses these categories.

We first explored associations between race and the crash correlates using bivariate cross-tabs and χ^2 tests to understand potentially important connections. We then moved to multinomial logistic regression, which uses a categorical dependent variable and produces a vector of coefficients to quantify the relationship between each explanatory variable and each dependent variable category (for more on multinomial models, see Washington et al., 2011). These coefficients can be compared directly across categories. We tested all variables for correlation before modeling and excluded any combination with a correlation above 0.6.

We ran the multinomial logit models in three stages: first limited to variables from crash data (“simple” model), then with crash and SLD or census variables, and finally with variables from the crash, census, and SLD together (“expanded” model). We estimated the simple model using the variables that demonstrated a significant association with race through the bivariate testing (using a cut-off of $p \leq 0.05$); all variables remained significant for at least one race in at least one of the models. A model with just SLD and crash data offered little additional explanation in comparison to a model with crash and census data, which dramatically changed the results of the simple model, so we focus on the simple and expanded models in this paper.

Note that we did not prioritize parsimony by removing variables that were less powerful (as some model fit metrics encourage), as we were more interested in exploring all potentially significant influences related to race and fatalities and contributing to a foundation for future research. All data were processed and analyzed in Stata 15 (2017), R (2020), and Microsoft Excel.

3. Findings

3.1. National overview of pedestrian fatalities by race

Pedestrian fatalities increased substantially starting in 2015, as Fig. 1 shows. Within that time period, White pedestrians comprised approximately 50% of those killed, although that percentage dipped slightly toward the end of the period. Percentages rose slightly for Black pedestrians and fluctuated for pedestrians classified as “other” for the purposes of this study, but otherwise held fairly steady.

Discussion of either raw numbers or percentages obscures the dramatic differences by race that are illuminated when exposure is considered, however. In order to estimate pedestrian fatality risk by race, it is necessary to divide the number of fatalities by some measure of pedestrian activity, or exposure. For example, all else equal, a racial group with twice as many people would experience twice as many pedestrian fatalities. An even better measure of exposure would be the number of pedestrian trips made by each racial group, given that some groups may walk more than others.

Indeed, the racial picture changes significantly when the pedestrian fatality rate is calculated on either a per-capita or per-trip basis (Table 2). We found that Black and Native American pedestrian were significantly overrepresented in terms of fatalities at the per-capita level, corroborating other research (Retting, 2020; Kaufman & Wiebe, 2017; Bellis et al, 2021; Retting, 2021), as well as in rates per million pedestrian trips. These significant differences underscore the need for investigating the underlying dynamics of pedestrian fatalities as they relate to race.

3.2. Bivariate analysis of crash correlates and race

We then looked at the percentage of various pedestrian fatality crash correlates for each race (Table 3), finding that the percentages for Black, Native American, Hispanic, and Asian pedestrians differ from those for White pedestrians for most variables. This difference is particularly acute for some of the variables more likely to be associated with injury severity, such as darkness (significantly more likely to be associated with Black, Native American, and Hispanic pedestrian fatalities, but less likely with Asian pedestrian fatalities – further illustrated in Fig. 2) and pedestrian alcohol usage (significantly more likely to be associated with Native American and Hispanic fatalities, but less likely with Black and Asian fatalities), among others, underscoring the need for additional research like the multinomial logit model in the next section.

3.3. Multivariate analysis of crash correlates and race

The results in Table 3 underscore the need for additional investigation into crash correlates to understand whether and to what degree bivariate correlations remain significant when controlling for other variables. Our model also incorporated census and SLD data from the tracts surrounding the crash locations to explore the influence of population dynamics (in particular, percentage of various races and age groups), walking and transit exposure (e.g., percentage of people walking and (separately) taking transit to work, percentage of zero-vehicle households), and built environment variables (network density of auto-oriented links and pedestrian-oriented links) on fatality prediction and other correlates. For example, the census data can help clarify the degree to which the Sunbelt variable is significant on its own versus as a proxy for racial residential patterns in the U.S., while the built environment variables can help clarify the degree to which the environment influences fatality outcomes.

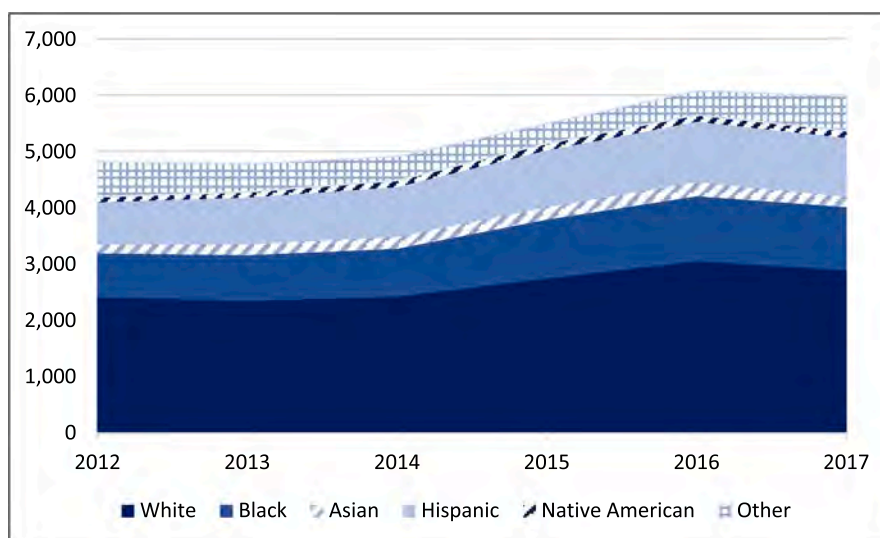


Fig. 1. Pedestrian Fatalities by Race, 2012–2017.

Table 2

Pedestrian Fatality Rates by Race/Ethnicity.

Race/Ethnicity ¹	Pedestrian fatalities per million population	Pedestrian fatalities per million pedestrian trips ²
White	12.6	0.103
Black	23.9	0.199
Asian	11.9	0.081
Native American	54.4	0.577
Hispanic	15.9	0.154
US Average	16.6	0.138

1 Other race categories are not shown.

2 Pedestrian trips source: National Household Travel Survey, 2017.

Table 3Percentage of U.S. Pedestrian Fatalities by Varying FARS Data Characteristics and Race, 2012–2017^{1,2}.

Crash correlates	Black (n = 5,758)	Native American, (n = 697)	Hispanic (n = 5,588)	Asian (n = 1,215)	White (n = 15,845)	Total ¹ (n = 32,059)
<i>Lighting Condition</i>						
Daylight	17%	10%	22%	36%	24%	23%
Darkness	79%	83%	74%	60%	72%	73%
Dawn/Dusk	3%	2%	4%	5%	4%	4%
<i>Sociodemographic Characteristics</i>						
Pedestrian age < 16	7%	3%	7%	3%	4%	5%
Pedestrian age 65+	11%	6%	17%	43%	22%	20%
Pedestrian sex = male	71%	73%	73%	55%	69%	70%
<i>Behavioral Factors</i>						
Pedestrian drinking	17%	35%	21%	9%	19%	18%
Driver drinking	8%	10%	8%	6%	8%	8%
Hit & run	24%	22%	23%	13%	16%	19%
Driver speeding	7%	4%	9%	7%	6%	7%
Driver distracted	7%	8%	9%	13%	10%	9%
Driver going straight	84%	81%	81%	73%	81%	81%
<i>Roadway Design & Operations</i>						
Pedestrian in crosswalk	7%	4%	11%	26%	10%	11%
Signal	12%	6%	13%	23%	12%	13%
Roadway has 4 + lanes	64%	51%	66%	59%	56%	59%
Local roadway	18%	12%	19%	21%	16%	17%
Arterial roadway	56%	56%	54%	57%	57%	56%
Freeway	16%	13%	17%	11%	14%	15%
Speed limit						
≤ 25 mph	9%	7%	10%	22%	10%	11%
30–35 mph	29%	19%	29%	34%	25%	27%
40–45 mph	32%	30%	31%	27%	31%	31%
50 + mph	30%	44%	29%	17%	35%	31%
<i>Other Contributing Factors</i>						
Clear weather	73%	69%	76%	74%	70%	72%
Weekend	37%	38%	38%	26%	33%	34%
Location in Sunbelt ³	46%	50%	46%	14%	35%	37%
SUV or Truck	39%	43%	42%	44%	45%	43%

1 The values in this table reflect all applicable pedestrian records in the FARS database from 2012 to 2017; the total column also includes other races not described here.

2 **Bold** script indicates a significant difference from the proportion of White pedestrians at the 95% level or greater.

3 The Sunbelt is the southern region in the United States, consisting of Florida, Mississippi, Alabama, Louisiana, Texas, New Mexico, Arizona, Arkansas, Tennessee, and South Carolina.

We present the results of the simple and expanded models for each race side-by-side in Table 4 in order to display how various crash correlates are associated with increased or decreased risk of a pedestrian fatality for a certain race in comparison to White pedestrians (illustrated through relative risk ratios ["RRRs"]). Only variables significant for at least one race in at least one of the models are included in the final model. The juxtaposed values also demonstrate how significance changes when contextual data are added to the model.

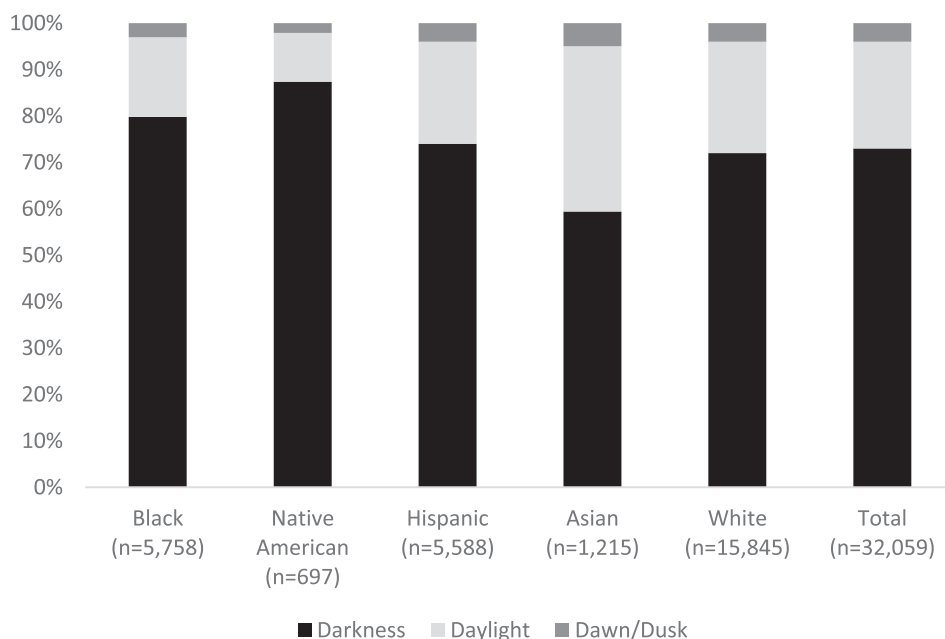


Fig. 2. Pedestrian Fatalities by Lighting Condition and Race, 2012–2017.

4. Discussion

4.1. Key findings

Our estimates of pedestrian fatality risk corroborate research showing that Black and Native Americans have higher rates of pedestrian fatalities on a per-capita and per-trip basis (Bellis et al., 2021). Our bivariate and multivariate analyses underscore the need to investigate pedestrian fatalities across all race categories, particularly given how results change when census variables are added to crash data. The following section discusses key findings and what they suggest about potential dynamics underlying the disparities, as well as questions for future research. All findings are presented in comparison to the baseline of White pedestrians; all relative risk ratios (“RRRs”) reflect values from the expanded models with census and Smart Location Database information included.

4.1.1. Darkness

Significantly more Black and Native American pedestrians were killed in darkness than White pedestrians (79% and 83% compared to 72%, respectively), and this disparity persisted in the multivariate model, corroborating recent research (Sanders et al., 2022). Black pedestrians were also significantly more likely to be killed at dawn/dusk. These findings suggest a critical need to understand patterns related to Black and Native American pedestrian safety specifically at night. For example, it is possible that Black and Native American communities are surrounded by roadways that are particularly dangerous at night due to speed or other factors, or that they disproportionately lack street lighting. Another explanation might be that skin color makes Black and/or Native American pedestrians particularly vulnerable to not being seen by drivers at night. There may also be other factors, such as patterns associated with labor and commuting, that lead to greater exposure for either Black or Native American pedestrians at night.

4.1.2. Children

Seven percent of Black and Hispanic pedestrian fatalities involved children under age 16, and these children were 2.1 times as likely to be killed as White pedestrians in the same age group, corroborating research on pedestrian injuries that found an overrepresentation of Black and Hispanic youth compared to White youth (Hamann et al., 2020). The discrepancy for age categories remained when census data on race and age, separately, were controlled for, but may reflect differences in age patterns within each race that should be investigated in future research. For example, these differences might be explained by higher proportions of each race under age 16, or by greater walking at night (when the majority of pedestrians are killed) among Black or Hispanic youth. Another explanation might be that Black and/or Hispanic youth live in neighborhoods with less pedestrian-scale lighting or less street lighting overall.

4.1.3. Older adults

In 43% of Asian pedestrian fatalities, the victim was aged 65 or older. These pedestrians were 1.7 times as likely to be killed as White pedestrians in the same age group, in contrast to Black, Native American, and Hispanic pedestrians in this age group, who were significantly less likely to be killed. As with findings about youth, the findings about older pedestrians need to be further explored to understand the degree to which they are explained by population dynamics versus environmental dynamics. For example, Asian elders

Table 4
Multinomial Logit Model Results¹

Variable	Black		Native American		Hispanic		Asian	
	Simple	Expanded	Simple	Expanded	Simple	Expanded	Simple	Expanded
<i>Environmental Influences</i>								
Lighting Condition (BL ² : Daylight)								
Darkness ³	1.365***	1.355***	1.767***	1.776***	1.070	1.025	1.058	1.022
Dawn/Dusk	1.242*	1.238*	1.328	1.420	1.084	1.059	1.099	1.005
Other/Missing	1.513	0.953	2.066	2.406	1.106	1.159	1.470	1.583
Clear	1.110**	1.069	1.239	1.074	1.355***	1.047	1.215**	1.011
Sunbelt	1.580***	1.019	1.417***	1.073	1.600***	1.295***	0.374***	0.591***
<i>Pedestrian Characteristics</i>								
Male	1.076*	1.053	1.035	0.957	1.192***	1.186***	0.671***	0.682***
Pedestrian age under 16	2.061***	2.137***	1.047	0.817	1.959***	2.144***	0.947	1.275
Pedestrian age 65+	0.474***	0.545***	0.359***	0.398***	0.822***	0.736***	1.887***	1.704***
<i>Pedestrian and Driver Behaviors</i>								
Pedestrian drinking	0.773***	0.882**	2.051***	2.122***	1.168**	1.234***	0.632***	0.729**
Driver drinking	0.885*	0.985	1.194	1.239	0.889	1.024	0.867	0.998
Hit & run	1.473***	1.193***	1.309*	1.104	1.512***	1.093	0.867	0.787*
Driver distracted	0.783***	0.927	1.074	0.930	0.974	1.132	1.043	1.124
Driver going straight	1.082	1.044	1.141	1.068	1.006	0.897*	0.909	0.906
Driver cited for speeding	1.172*	1.073	0.816	0.523*	1.578***	1.294**	1.134	0.883
Pedestrian in crosswalk	0.612***	0.718***	0.728	0.698	1.124	0.946	1.673***	1.314*
<i>Roadway Design and Operations</i>								
Speed limit (BL: 25 mph)								
30–35 mph	0.960	1.092	0.757	1.038	0.912	1.003	0.665***	1.005
40–45 mph	0.647***	1.035	0.740	1.228	0.651***	0.927	0.543***	0.988
50 + mph	0.471***	1.032	0.925	1.056	0.478***	1.065	0.250***	0.661*
4 + lanes	1.361***	1.065	0.921	1.008	1.600***	1.087	1.529***	1.058
Local roadway	1.161*	1.125	0.684*	0.840	1.199**	1.236**	1.069	1.123
Arterial roadway	1.181**	1.098	0.899	0.948	1.050	1.069	1.052	0.945
Freeway	1.633***	1.247**	0.743	0.907	1.672***	1.114	2.021***	1.247
Crash occurred at a signal	1.238**	1.056	0.897	0.986	0.996	0.914	1.034	0.848
<i>Other Contributing Factors</i>								
Weekend	1.092**	1.056	0.976	0.968	1.150***	1.151***	0.863*	0.903
SUV or Truck	0.838***	0.974	1.072	0.959	0.954	0.986	0.894	0.987
<i>Census and SLD Variables</i>								
Percentage who walked to work		0.962		46.517***		1.735		0.577
Percentage 65 years and older		0.289***		0.012***		3.527***		1.251
Percentage Black		114.098***		0.038***		7.345***		3.790***
Percentage Native American		4.568*		8215.548***		23.356***		0.537
Percentage Asian		5.184***		0.781		15.140***		708.181***
Percentage Hispanic		4.738***		2.945***		130.346***		6.827***
Percentage Native HI/AK Native		0.019		35231.670***		15.326		341,093.5***
Percentage other		5.756		0.000		6.358		408.700*
Percentage zero-vehicle households		2.032**		0.304		1.610*		1.806
Percentage below poverty		0.360***		1.821		0.187***		0.202***
Percentage under age 18		0.507		6.454		0.861		0.461
Percentage disabled				204.182***		0.144***		0.002***
Ave. auto-oriented network density		1.010		0.997		0.989		1.001
Ave. pedestrian-oriented network density		0.992*		1.028***		1.008*		1.007
Constant	0.223***	0.087***	0.022***	0.006***	0.156***	0.044***	0.125***	0.086***

N: Simple model = 30,254, Expanded model = 30,237

Pseudo R²: Simple model = 0.0437, Expanded model = 0.1955

1 All results presented as relative risk ratios compared to the baseline of White pedestrian fatalities.

2 “BL” stands for baseline, which is the reference category for any categorical variable.

3 **Bolded** variables indicate significance. Significance is further indicated by asterisks as follows: * $p \leq 0.05$; ** $p \leq 0.01$; *** $p \leq 0.001$.

may be more likely to be killed than White elders due to a higher rate of walking, lower levels of street lighting, and/or the types of streets along which they walk. Conversely, Black, Native American, and Hispanic elders may walk less than White elders, or may comprise a significantly smaller proportion of the population than White elders.

4.1.4. Behavior

In 35% of Native American pedestrian fatalities, the pedestrian had been drinking alcohol – a significantly higher percentage than any other group. Both Native American and Hispanic pedestrians were significantly more likely than White pedestrians to have drunk alcohol prior to being killed, with Native Americans over twice as likely (2.1 RRR). Conversely, Black and Asian pedestrians were significantly less likely to have drunk alcohol. In contrast to driving while intoxicated, walking while intoxicated is not illegal and is not in itself a factor that would likely lead to a pedestrian fatality in an otherwise low-speed environment. That said, alcohol usage does impair judgment, which may be particularly harmful in high-speed and/or complex environments. Future research should investigate how to provide safe walking conditions for impaired pedestrians while acknowledging the complexity of larger trends of alcohol usage, particularly within Native American communities, particularly with regard to the critical interaction between locations of establishments associated with alcohol use (e.g., taverns, casinos, liquor stores) and high-speed roadways that have a substantial underlying risk of pedestrian injuries.

The link between driver alcohol use, alcohol establishments, and pedestrian fatalities may also be reflected in dynamics associated with hit-and-run crashes ([AAA Foundation for Traffic Safety, 2018](#)), which were significantly more likely for Black pedestrians than White pedestrians, but significantly less likely for Asian pedestrians. The hit-and-run variable had been significant for Native American and Hispanic pedestrians until census variables were included, suggesting a potential association between where hit and run crashes occur and neighborhood sociodemographics. Overall, nearly one-quarter of pedestrian fatalities among Black, Native American, and Hispanic pedestrians involved a hit-and-run (compared to 16% for White pedestrians). Future research should examine whether there are neighborhood and/or population dynamics that can explain these findings, which remained even when controlling for darkness (when most alcohol usage occurs).

4.1.5. Roadway design and Operations

Variables representing roadway design and operations provide important insights into pedestrian safety by illuminating risk factors and highlighting the role of the surrounding context in pedestrian safety, particularly through the change in significance for several roadway variables once census data were added. For example, in the simple model, Black pedestrian fatalities were significantly more likely than White pedestrian fatalities to be associated with several roadway design variables, including the presence of a signal, whether the crash occurred on a roadway with four or more lanes, and whether the crash occurred on a local or arterial roadway or freeway. Hispanic pedestrians were significantly more likely to have been killed on a roadway with four or more lanes and on a local roadway or freeway. Asian pedestrians were more likely to have been killed on roadways with four or more lanes and on freeways. However, after controlling for roadway type and other factors, White pedestrians were significantly more likely than Black, Hispanic, and Asian pedestrians to be killed where the speed limit was at or above 40 mph.

The change in these variables once census data were added suggests that the variables were acting as some type of exposure proxy, indicating the value of examining data in multiple ways – but also underscoring how population outcomes are associated with their surrounding context. For example, adding just the percentage of Black population to the model was enough to render road type and speeds under 50 mph insignificant, fitting with finding that arterials are disproportionately located in Black neighborhoods in Oregon ([Roll, 2021](#)) and that pedestrian fatality hotspots in the U.S. are disproportionately located along higher-speed, higher volume arterials in Black and Hispanic neighborhoods ([Schneider et al., 2021](#)). Other variables, like speed limit and the roadway having four or more lanes, were rendered insignificant when a combination of census variables was accounted for, suggesting an interplay between roadway design factors and Black and Hispanic American residential patterns, in particular. This may reflect the larger and longer-term effects of transportation and housing policy in the U.S. – including at times explicitly racist policy – that has disproportionately negatively impacted lower-income and BIPOC Americans ([Bullard, 2003](#); [Rothstein, 2017](#)).

Even controlling for the census data, Black pedestrians were significantly more likely to have been killed on a freeway than White pedestrians, while Hispanic pedestrians were significantly more likely to have been killed on a local roadway. Conversely, Asian pedestrians were significantly less likely than White pedestrians to have been killed on roadways signed at 50 mph or more, but significantly more likely than White pedestrians to be killed in the crosswalk. For Native Americans, roadway design variables like speed limit and number of lanes were insignificant even in the simple model. This finding seems counterintuitive in the face of an established relationship between those variables and pedestrian safety, but it may reflect that other factors are more influential in Native American pedestrian fatalities compared to White pedestrians (e.g., alcohol involvement, darkness, and other population characteristics).

Data from the Smart Location Database were mostly insignificant once census data were added, with a couple of exceptions. First, a higher density of pedestrian-oriented facilities had a mixed effect, slightly reducing the relative risk of a pedestrian fatality for Black pedestrians in comparison to White pedestrians, but slightly increasing the relative risk for Native American and Hispanic pedestrians. Auto-oriented facility density was only significant for “other” pedestrians compared to White pedestrians. These findings corroborate the idea that neighborhood and street design are often closely associated with population dynamics, such that knowing who lives in a place can be a powerful predictor of relative pedestrian safety.

4.1.6. Other potential factors

Other model results revealed that Hispanic pedestrians were significantly more likely than White pedestrians to be killed on the

weekend and in the Sunbelt, even after controlling for census population variables. Hispanic pedestrian fatalities were also significantly more likely to be male than White pedestrian fatalities, although Asian pedestrian fatalities were significantly more likely to be female. Again, these findings should be investigated further to understand what dynamics are at play, including whether there is truly increased risk for either of these groups, or if these results reflect exposure (i.e., who is walking in these communities).

Another potentially important factor for future research is vehicle type. While the involvement of an SUV or truck did not differ significantly by race, the fact that these vehicles were involved in 43% of pedestrian fatalities merits attention – particularly given recent findings that SUVs and trucks are increasing in size and weight (Schmitt, 2020) and involvement in pedestrian fatalities is increasing (Tefft et al., 2021; Tyndall, 2021).

The role of exposure in pedestrian fatalities also needs future research. In addition to temporal exposure (do certain people walk more at certain times of day?) and spatial exposure (do certain people walk more in certain locations?), we need a better understanding of the degree to which current measures of exposure, e.g., the percentage of people walking to work, accurately represent walking. For example, given that walking is the primary mode to access transit, it may be that transit usage should be routinely considered along with walking trips as a more comprehensive pedestrian exposure measure. Alternatively, we may need to find more comprehensive measures than the census' journey to work data. Transit data from the census and SLD did not improve the models in this paper, but more nuanced walking exposure data might more comprehensively capture the relationship between walking and safety outcomes.

Even if these results are due primarily to differences in exposure, such as Black and Native American populations being more likely to walk more during darkness or along roadways with higher speed limits, or Asian women or elders being more likely to walk than White women or elders, they are still important for developing targeted safety measures to address these fatalities.

4.1.7. Policy implications

Our findings indicate that more in-depth research is needed to understand underlying reasons for racial differences in pedestrian fatality trends. Still, practitioners can act on these preliminary findings. For example, considering that some racial groups experience higher pedestrian fatality rates, roadway safety improvements could be prioritized in neighborhoods with high concentrations of these groups. Practitioners could engage with leaders to develop culturally-meaningful pedestrian safety messaging and educational programs to connect with local residents of specific racial and ethnic backgrounds. Fundamentally, agency leaders can work with community advocates and elected officials to make systemic changes to land use, transportation, and housing policies that contribute to higher-risk pedestrian conditions in general and specifically for people with certain racial backgrounds (e.g., encourage denser, mixed-use, transit-oriented development so that regions are less dependent on high-speed automobile thoroughfares; provide more affordable housing options in places with safer pedestrian conditions). In rural areas, and particularly around tribal lands, protected, connected pedestrian routes are critical for safe travel along the often higher-speed roadways (Tribal Transportation Safety Management System Steering Committee, 2017).

We also want to underscore a critical point: several factors are key to improving pedestrian safety, and many of these factors do not differ by race. For example, our data indicate that 62% of pedestrian fatalities occurred at locations with speed limits of 40 mph or higher, and 59% occurred on roadways with four or more lanes. Pedestrian injury severity is causally linked to vehicle speed (Tefft, 2013), and roadway design variables that increase crossing and yielding complexity, like multiple lanes, increase crash risk (Thomas et al., 2017). Additionally, 73% of pedestrian fatalities from 2012 to 2017 occurred in darkness – and pedestrian fatalities in darkness are significantly more likely to occur at higher speeds and on multilane roadways than those in daylight (Sanders et al., 2022). These findings underscore the conclusion that redesigning roadways to reduce speeds and crossing distances, providing protected pedestrian crossings, and improving lighting are fundamental actions to reduce pedestrian risk in all communities.

4.2. Limitations

This study lacks some important variables associated with safety, like traffic volumes and the presence of countermeasures. Additionally, more nuanced exposure data would aid in helping to understand the degree to which some of the highlighted differences between races are due to walking activity versus other factors. We also acknowledge that the classification of “race” into a few categories oversimplifies the interaction between race and ethnicity and obscures differences within races themselves. Future research can build on this work and address these limitations to help create a more nuanced understanding of the relationship between race and pedestrian safety.

5. Conclusions

This paper used multinomial logit modeling to compare key correlates of pedestrian fatalities and race. We hope our findings establish a baseline for future research and help policymakers and practitioners respond more proactively to dynamics that are harmful in general and seem to be particularly harmful for pedestrians of certain races. While aggregate statistics are helpful for raising alarm bells, disaggregation can be critical for informing next steps – particularly if, as this analysis found, next steps might need to be tailored to different neighborhoods or groups.

Key findings include that, compared to White pedestrians, Black and Native American pedestrians are at increased risk for being killed overall and specifically in darkness; Black and Hispanic youth are at increased risk compared to White youth; and Asian women and elders are at increased risk compared to White women and elders. Additionally, pedestrian alcohol usage was significantly higher among Native American pedestrian fatalities than other groups, which may exacerbate an already harmful lack of pedestrian infrastructure on and near tribal lands. Furthermore, we found that roadway design factors associated with pedestrian injury severity, such

as speed and number of lanes, often lost significance when neighborhood population dynamics were considered. This troubling finding likely reflects that certain neighborhoods, particularly those with higher percentages of Black Americans, have been disproportionately surrounded by and/or built near higher-speed, higher-volume roads, as found in other research (Schneider et al., 2021; Roll, 2021). Many of our findings raise additional questions for future research, including regarding the role of exposure in pedestrian fatality rates.

In addition to important differences between races, our findings corroborate research showing that pedestrian deaths on our streets are significantly associated with factors like speed and roadway design that directly result from professional decisions and guidelines. We hope that the findings in this paper will support pedestrian safety efforts at the local, state, and national scales to turn this tide and create a system where all people are safe to walk.

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Rebecca L. Sanders: Conceptualization, Methodology, Data curation, Formal analysis, Investigation, Writing – original draft.
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Declaration of Competing Interest

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

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ROADWAY SAFETY INSTITUTE

Human-centered solutions to advanced roadway safety

Understanding Roadway Safety in American Indian Reservations: Perceptions and Management of Risk by Community, Tribal Governments, and Other Safety Leaders

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UNDERSTANDING ROADWAY SAFETY IN AMERICAN INDIAN RESERVATIONS: PERCEPTIONS AND MANAGEMENT OF RISK BY COMMUNITY, TRIBAL GOVERNMENTS, AND OTHER SAFETY LEADERS

FINAL REPORT

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EXECUTIVE SUMMARY

What's at stake?

This research provides new sources of data and policy-relevant findings to address the unusually high rates of roadway fatalities and injuries among American Indians. Nationally, motor vehicle crashes (MVCs) are the leading cause of unintentional injury for American Indians aged 1 to 44 (Raynault, Crowe, & Ngo, 2010). Their motor vehicle death rate is higher than for any other ethnic or racial group in the United States (Pollack et al., 2012), and for the decades preceding this study it had been increasing rapidly at a time when the nationwide rate was decreasing (Poindexter, 2004). On average, approximately 535 Native American and Alaska Native fatalities are attributed to motor-vehicle related crashes each year (Federal Highway Administration, 2018).

The focus of this study - **roadway safety in American Indian reservations** - is intrinsically important. In the 2010 census, 22% of people identifying as American Indian and Alaska Natives lived in reservations, trust lands, or tribal statistical areas (Norris, Vines, & Hoeffel, 2012). At the same time, many non-Native people live and travel in tribal lands, and many MVC fatalities in tribal lands are of non-Native people (Li & Bhagavathula, 2016). In sum, there is a well-recognized need to reduce MVC injuries in tribal lands (Shinstine & Ksaibati, 2013), which has relevance for all populations in these areas and may also help to explain the high rates of motor vehicle crash fatalities among American Indians nationwide. Chapter 1 presents a review of the literature and an explanation of the research questions driving this study.

Research questions

1. What are the key sources of roadway safety risk in reservations, according to people with direct knowledge of and responsibility for reservation roadway safety?
2. What is distinctive about roadway safety in reservations, if anything, relative to other areas?
3. How are relationships among agencies with overlapping responsibility for roadway safety in reservations affecting safety?
4. How can roadway safety in reservations be improved?

Data sources and methods

The researchers collaborated with the Federal Highway Administration (FHWA) to design and analyze results of the 2016 Tribal Transportation Safety Data Survey, a national online survey with responses from 151 representatives of tribal governments and 45 representatives of state governments.

This study generated extensive primary data through case studies of four reservations in Minnesota and a national survey. The case studies were conducted through partnerships with the tribal governments of the Red Lake Band of Chippewa, Fond du Lac Band of Lake Superior Chippewa, Leech Lake Band of Ojibwe, and Mille Lacs Band of Ojibwe, and in communication with Minnesota Advocacy Council on Tribal Transportation. For the case studies, data collection methods included extensive fieldwork.

Specifically, 90 times between October 2013 and July 2018, a member of the research team visited a reservation to conduct three to ten consecutive hours of fieldwork. In addition, we conducted 102 semi-structured interviews in person or by phone with key stakeholders (engineering, enforcement, emergency responder, and education leaders from tribes and related jurisdictions), “virtual drive-alongs” in which we spent hours poring over detailed maps with seven expert drivers (e.g., school bus or propane delivery truck drivers) in four reservations, and quick in-person surveys of 220 reservation residents at community events.

These methods are described in Chapter 2 and Appendices A-C. The national survey findings are presented in Chapter 3 (summarized in Table 3.1). The four case studies are presented in Chapter 4.

Contributions of the study

- **Data generation:** This study developed and modeled qualitative research methods that create new data sources and facilitate in-depth analysis and problem-solving in particular reservations. These data emphasize the perspectives of people with the most direct, informed knowledge of reservation conditions.
- **Identification of high-priority reservation roadway safety concerns:** Analysis of the case study and national survey data indicate five key areas: *pedestrian safety, road engineering and repair, reckless driving (not necessarily due to impairment), seatbelt and car seat use, and inter-jurisdictional coordination*.
- **Inter-agency coordination needs:** Case study and survey data strongly indicate the vital importance of high-quality coordination between tribes and federal, state, and local governments in reservations. This is the first study to document the positive – or negative – consequences for roadway safety and resource efficiency of cooperative, complementary, or divisive relationships among these entities.

Summary of key concerns and recommendations

1. ***The data from all sources are unequivocal that pedestrian safety is a critical, distinctive, and under-recognized priority in reservations.*** Pedestrian safety was the most frequently named concern in all case study data, while inadequate pedestrian facilities was the fourth most frequently identified concern – among over a dozen possibilities – by the 150 tribal government respondents to the national survey. Furthermore, pedestrian safety was consistently named as the single most distinctive feature of roadway safety in reservations, relative to rural areas more generally. This is a novel and important finding of this study; there has been relatively little prior research indicating this is a particular concern. Infrastructure investment, signage, enforcement, and education to protect pedestrians in reservations is extremely important (Chapter 5.1).
2. ***Road engineering and repair need sustained resources.*** The national survey data indicate that road quality engineering and repair are very high priorities for both tribes and states, indicating the continuing importance of federal and state programs to fund this work. The case study data

indicate that public works professionals take great pride in a high degree of quality and consistency in roadway engineering of county and state roads, regardless of location, which is positive for both safety and equity (Chapter 5.2).

3. ***Impaired driving must not be assumed to be “the” explanation.*** The case study and national survey data strongly confirm that enforcement and education to reduce reckless driving are high priorities. The case study data strongly indicate great concern about driving while distracted by texts and other cell phone use. They also challenge common assumptions about drinking and driving or drug use as an explanation for American Indian mortality rates (Chapter 5.3).
4. ***Education and enforcement to increase seatbelt use are essential.*** The national survey of tribes confirms that improving seatbelt and car seat use is a high priority. Positive examples from the case studies reinforce the importance of having a steady, familiar, trusted person or group who works persistently on these issues on the reservation (Chapter 5.4).
5. ***Tribes need better cooperation with local, state, and federal agencies.*** Two needs in particular stand out: addressing mismatched perceptions of ground conditions through improved data quality and sharing and an expansion of knowledge sources; and improving coordination for resource sharing, planning, and implementation, especially for infrastructure and enforcement (Chapter 5.5).
6. ***Further research is needed to improve reservation roadway safety,*** particularly to: evaluate roadway safety implementation in reservations with tribes; advance qualitative methods and expand qualitative data sources; and assess emergency response quality in reservations (Chapter 5.6).

CHAPTER 1: THE RESERVATION ROADWAY SAFETY CONTEXT

1.1 WHAT'S AT STAKE FOR ROADWAY SAFETY IN RESERVATIONS?

This research addresses a high-stakes issue for the wellbeing of American Indian¹ communities: the high rate of fatalities and severe injuries from traffic accidents in American Indian populations and tribal lands. Understanding the nature of these risks and their contexts is important for improving safety. Nationally, motor vehicle crashes are the leading cause of unintentional injury for American Indians aged 1 to 44 (Raynault, Crowe, & Ngo, 2010). Their motor vehicle death rate is higher than for any other ethnic or racial group in the United States (Pollack et al., 2012). When we began this study in 2013, the most prominently cited statistic about this problem was that their motor vehicle crash (MVC) fatality rate had increased 52.5% at the time of the latest published analysis, covering 1975-2002, compared with a decrease in the nationwide rate of 2.2% (Poindexter, 2004). On average, approximately 535 Native American and Alaska Native fatalities are attributed to motor-vehicle related crashes each year (Federal Highway Administration, 2018).

Most research on this phenomenon examines sources of risk at the level of the entire American Indian population of the United States, without adequate attention to heterogeneity within this group and the interacting features of specific contexts. In contrast, this research project gathers and interprets on-the-ground views about sources of risk and options to improve roadway safety *in American Indian reservations* (Figure 1.1).

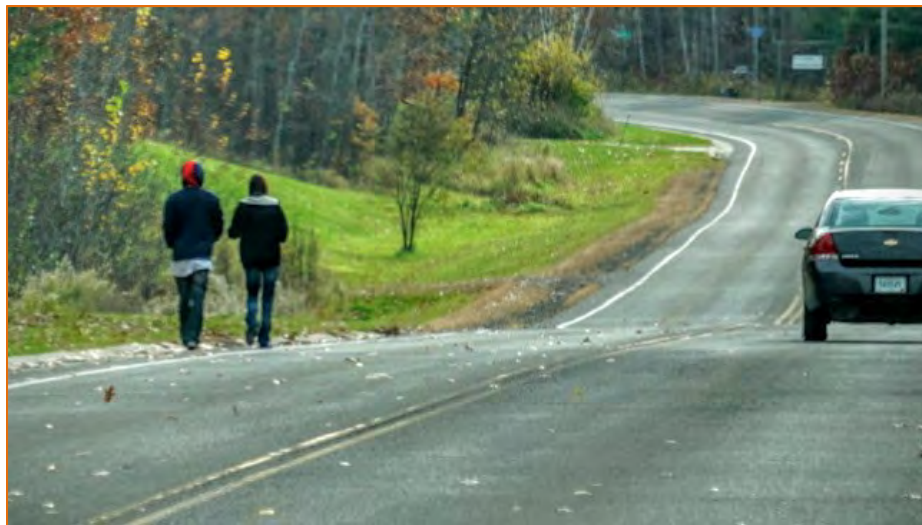


Figure 1.1 Pedestrians in roadway in Mille Lacs Band reservation, Minnesota

Photo by Guillermo Narváez.

¹ American Indian is the descriptor preferred by our collaborators and the majority of members of the communities in our region. Some communities prefer to describe themselves as Native American; we are taking the lead of our project partners.

There is a well-recognized need to reduce injury crashes in reservations (Shinstine & Ksaibati, 2013). As of the 2010 census, 22% of people identifying as American Indian and Alaska Natives nationwide lived in reservations, trust lands, or tribal statistical areas (Norris, Vines, & Hoeffel, 2012). Thus, the vast majority of American Indian people do *not* live or spend the majority of their time in reservations. This makes it important to study distinctions and overlaps between national American Indian population and American Indian reservation phenomena and to avoid the assumption that something about reservations explains excess deaths from MVCs among American Indians nationwide. Additionally, understanding the reservation context is important for improving the well-being of American Indians and others who live on and travel through reservations (Li & Bhagavathula, 2016).

Table 1.1 illustrates the overlap of American Indian and reservation traffic fatalities in National Highway Traffic Safety Administration data on all MVC fatalities in “tribal lands” over the period 2011-2015. Statistics on MVCs in “tribal lands” provide the most consistent and comprehensive data available for understanding MVC dynamics in American Indian communities. This category includes reservations and other lands owned by federally recognized tribes, which as of this publication number 573 (Bureau of Indian Affairs, 2018).²

The MVC data indicate four factors that are most frequently associated with American Indian traffic fatalities: lack of proper seatbelt or child seat restraints (found in 47% of all American Indian traffic fatalities), alcohol-impaired driving (42%), speeding (33%), and being a pedestrian (19%). These data also make clear that what occurs in reservations is a partial, yet important, explanation of American Indian traffic fatalities: only 27% of all such fatalities occur in reservations and almost half (46%) of fatalities in reservations are of non-Indian people. Factors in fatalities for American Indians nationwide (regardless of location), of all fatalities in reservations (regardless of ethnicity), and of American Indians specifically in reservations are similar. Three distinctions are that alcohol impairment, a lack of seatbelt or car seat restraints, and speeding are reported more frequently as features of fatalities on reservations (generally, and among American Indians in particular) than among fatalities of American Indians nationwide.

This analysis indicates that fatalities on tribal lands (using Bureau of Indian Affairs base maps) decreased 11% over the period 2009-2014 when compared with the previous five-year average. This improved faster than the 1.7% decrease for all areas of the United States. Although the latest data show a decrease in MVCs for American Indians and imply the gap may be closing, the rates of fatalities and severe injuries among American Indian people and on tribal lands remain unacceptably high. Tribal transportation experts, state and federal agencies, and a range of policies and programs have identified this situation as an area of elevated concern and priority. The findings of the current report support the view that improving safety on tribal lands needs continuing attention.

² However, some important limitations need to be understood. Tribal lands and the residences of American Indian or native people are not the same; federal base maps for tribal lands omit substantial geographic regions where many American Indians live, such as Oklahoma tribal statistical areas, the lands of Alaskan Natives or native Hawaiians, and the lands of tribes that are not federally recognized.

Table 1.1 American Indian and reservation traffic fatalities in the US, 2011-2015

	# % of All American Indian fatalities	# % of All Fatalities on Reservations	# % of all American Indian Fatalities on Reservations
All American Indian fatalities	2,840		
	100		
*All fatalities in tribal areas, 2010-14	*3,278		
	NA		
All fatalities on reservations		1,439	
		100	
American Indian fatalities on reservations	777	777	777
	27	54	100
Fatalities in which vehicle occupant was unrestrained	1,321	703	415
	47	49	53
Alcohol-impaired fatalities, blood alcohol level .08+	1,200	613	418
	42	43	54
Speed-related fatalities	944	543	309
	33	38	40
Pedestrian fatalities	551	197	136
	19	14	18

All data are from NHTSA's Native American Traffic Safety Facts (2017), based on 2011-2015 FARS data. The exception is that the source for the row marked with an asterisk (*) (*All fatalities in tribal areas) is from analysis by the Tribal Transportation Safety Management System Steering Committee (2017).

1.2 EXISTING EXPLANATIONS IN THE LITERATURE

Additional research is needed to identify current reservation roadway safety trends and, most importantly, to explain them so that the most effective interventions may be designed and implemented to improve safety and reduce health disparities. At the time this study began, less than 30 peer-reviewed research papers had been published in the previous two decades about the problem of elevated crash risks affecting American Indian people, and many of these looked at the US American Indian population as a whole without distinguishing reservation environments from the whole.

These studies provide several types of explanations for the high rates of American Indian crash fatalities and injuries:

- Individual behaviors that contribute to the elevated crash risk include driving while impaired by alcohol or drugs, lower rates of usage of seatbelts and child safety restraints by American Indians, passengers riding in truck beds, and traveling at unsafe speed for road conditions (Pollack et al., 2012; Poindexter, 2004; Campos-Outcalt et al., 1997; Grossman, D.C. et al., 1997).
- Engineering- and repair-related road condition factors emphasize inadequacies in traffic control devices, signage, road and intersection design, lighting, road surface repair, mowing or plowing for visibility, and ice or snow removal (Michalek et al., 1993; Grossman et al., 1997; LaValley et al., 2003; Raynault et al., 2010).
- Systemic issues relating to poverty, isolation, and institutional capacity are also identified, including unmet health needs leading to impaired driving or medical emergencies; aging vehicles or passenger crowding associated with chronic and systemic poverty in many reservation communities; limited or delayed access to adequate emergency medical response; lax law enforcement to discourage reckless driving; poor road maintenance or enforcement due to gaps or confusing overlaps in road ownership and legal jurisdiction among multiple jurisdictions; and policies prohibiting alcohol sales on-reservation that may lead to driving while intoxicated (Gallagher et al., 1992; Grossman et al., 1997; Andrew & Krouse, 1995; Phelan et al., 2002; Johnson, Kao, & Korenbrot, 2006; Raynault et al., 2010).

Research also sheds light on opportunities to address these problems. Tribal transportation leaders identify capacity constraints (staffing levels, training or experience, operational funding) on their abilities to produce and implement safety audits and plans. Previous studies have found a need to build partnerships and institutional capacity to enhance knowledge, tools (e.g., road safety audits), and collaborations to address tribal transportation safety needs (Fleming & Strong, 2000; Zaloshnja et al., 2003; Bailey & Huft, 2008; Raynault et al., 2010; Sequist, Sequist, & Acton, 2011).

The recommendations of many previously published studies are not adequately informed by public policy and management science. Consequently, often their concluding recommendations are not strategic about workable leverage points for improving safety. This project therefore emphasizes policy and governance features of reservation roadway safety, as a foundation for additional, future studies or capacity-building work.

1.3 ROADWAY SAFETY AS A “WICKED PROBLEM” NEEDING INTER-JURISDICTIONAL

Safety is a “wicked problem,” meaning that it does not respect traditional disciplinary, jurisdictional, or physical boundaries or fit traditional problem definitions. Wicked problems cannot be reduced to an easily defined issue that technical expertise can address; no single organization or sector can resolve safety risks; and they are unstable, presenting emergent and unpredictable features and impacts (Rittel & Webber, 1973; Fischer, 1993; Roberts, 2004; Kettl, 2006). Moreover, wicked problems complicate interactions of governments and the public, as non-governmental stakeholders’ needs and expectations

of government increase and the number of involved governmental and nongovernmental entities multiply (Denhardt & Denhardt, 2000; Vigoda, 2002; Provan & Kenis, 2008; Goldsmith & Kettl, 2009).

Indeed, previous studies on improving roadway safety have conclusively found that it is a high priority to improve collaboration across sectors, disciplines, and all levels of government (Fleisher, Wier, & Hunter, 2016), including specifically when working in American Indian reservations to reduce motor vehicle fatalities (Letourneau & Crump, 2016). Thus, there are inherently important relationships among engineering, education, emergency responders, and enforcement to improve safety. This requires coordination among those different units and types of responsibilities and expertise.

High-quality coordination among organizations, sectors, disciplines, or ways of knowing can strengthen responsiveness and adaptation to “wicked problems” (Quick & Feldman, 2014) such as safety. When we view high MVC and fatality rates as failures of systems to reliably ensure safety (Reason, 2000), the value of exchange among disciplines, agencies, and jurisdictions to anticipate risks, understand problems, and head them off becomes clear (Weick & Sutcliffe, 2011). Through effective coordination, these entities can increase their capacity to address problems such as safety because together the organizations can recombine their individual information, skills, and material resources to address these challenges more effectively (O’Leary & Bingham, 2009; Innes & Booher, 2010; O’Leary & Vij, 2012; Provan & Lemaire, 2012). Furthermore, while fluidity and flexibility in these boundaries are valuable for resilience, ambiguity and conflict around them can prohibit effective responses (Roberts, 2010).

To be clear, effective coordination does not need to involve full cooperation, a complete alignment of goals, pooling resources, or subsuming one entity under the authority of another – which is a particular concern where a tribe’s sovereignty is challenged, as discussed below. Generally, working across the jurisdictional (e.g., tribe vs. county) or disciplinary (e.g., law enforcement vs. engineering) boundaries can occur in several ways. Options include translating across the boundaries so that each group can understand and work with (or at least not against) the other, aligning among the differences so that each continues to do its work without undesirable conflicts or redundancies, or decentering the work so that authority, resources, and roles are more fluidly shared (Quick & Feldman, 2014).

1.3.1 Checkerboard patterns of ownership and responsibility for roads

Effective inter-jurisdictional coordination for roadway safety becomes all the more important – even as it becomes more challenging – in the landscape of reservations. There is inherently interaction and interdependence among tribal, federal, state, and local jurisdictions from the very fact that a blend of tribal, federal, state, or local (county, city, and/or township) roads literally intersect in the physical landscape of most reservations. There are often non-tribal townships, cities, or unincorporated areas of counties that lie fully or partially within the reservation boundaries.

The jurisdictional overlaps follow the “confusing patchwork” (Fletcher et al., 2010; p. 43) of land ownership found in most reservations due to the historic “allotment” (division) of Indian lands under the Dawes Act of 1887, which split land held in trust collectively for the tribe into parcels owned by individual families (Anderson et al., 2015). Following allotment, approximately two thirds of all land in

reservations all over the United States was lost to non-tribal entities (A. Treuer, 2012), sold to natural resource companies for private commercial use, purchased by non-native people for residences (often by county governments for non-payment of taxes), or taken by non-tribal governments (e.g., for state parks, national forests, and federal military installations). Thus, land within reservations is rarely contiguously in tribal ownership and control. For example, in the Leech Lake reservation, the subject of one of the case studies in this project, only 4% of the land is in tribal ownership (Figure 1.2).

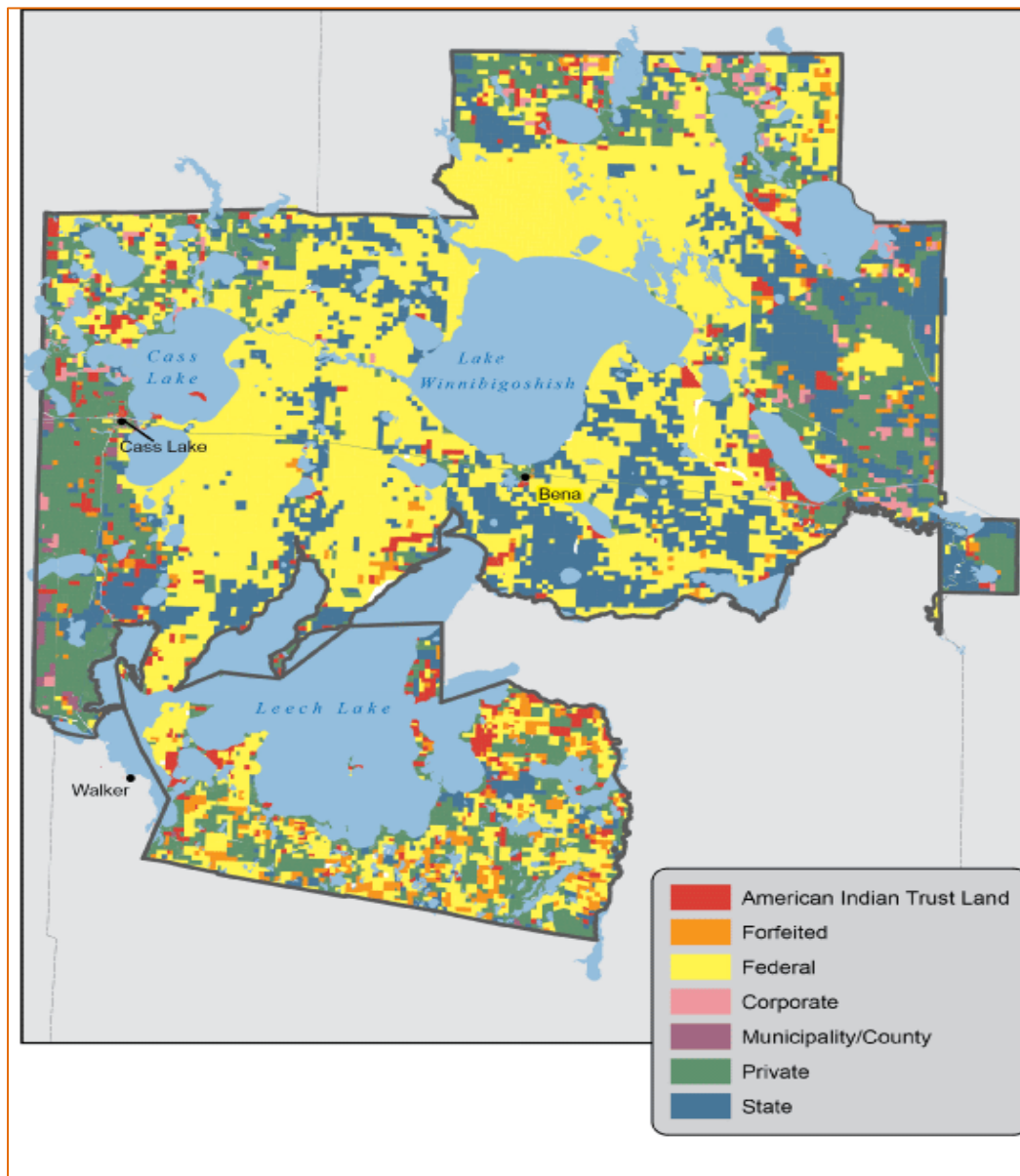


Figure 1.2 Diffused land ownership in Leech Lake reservation

Only 4% of land within the reservation boundary remains in tribal ownership. Source: Macalester College, 2010, based on data from Cass, Itasca, Beltrami, and Hubbard County Assessors, ESRI, and DNR

This “checkerboard” interspersion of residences, businesses, and settlements of tribal and non-native people complicates clarity, authority, and responsibility for law enforcement, emergency response, and driver education as well as roadway construction and management. Matters of responsibility and

authority – who has it *and* who may exercise it – are constantly in question and often contested in most reservations. Tribal sovereignty is constantly salient.

1.3.2 Tribal sovereignty and law enforcement relationships

Roadway safety in reservations cannot be understood without an appreciation of tribal sovereignty. In theory, tribal sovereignty could simplify roles and authority for roadway safety, despite the physical overlaps of territory, roads, and jurisdiction. In practice, however, there is confusion and conflict over different features of roadway safety in reservations because of ongoing friction and renegotiation of who has authority, responsibility, and rights over what. Some of this conflict arises from ignorance about what sovereignty is. David Treuer, a nationally recognized scholar of American Indian history and culture and a member of the Leech Lake Band of Ojibwe, has stated, “There is probably no aspect of Indian life more misunderstood by Indians and non-Indians alike than sovereignty” (D. Treuer, 2012; p. 31).

One definition of tribal sovereignty is the status of tribes as “distinct, independent, political communities, retaining their original natural rights,” according to Supreme Court Justice John Marshall in *Worcester v. Georgia*, an 1832 ruling comprising one part of the Marshall trilogy. The trilogy reaffirmed the standing of federally recognized tribal nations – those with treaties with the United States – as autonomous, sovereign nations with the right to self-government, such that states and local governments may not exert their authority within reservation territories (Cohen, 1945; French, 2007; Anderson et al., 2015).

Certainly, however, sovereignty means more than formal legal status. As prominent native scholar Vine Deloria (1979: 27) explained, ultimately:

[Sovereignty] consist[s] more of continued cultural integrity than of political powers, and to the degree that a nation loses its sense of cultural identity, to that degree it suffers a loss of sovereignty.

More recently, it has been defined as an ongoing enactment of a “third space” of ongoing negotiation of the nationhood of people with rights to their identity, culture, and lands as a colonizing government seeks their absorption and assimilation into the United States (Bruyneel, 2007; p. xiii). Thus, sovereignty is perhaps better understood as part of complex nationhood, “a layered and performative identity fraught with ambivalence and debate” comprised of the interplay of band and cultural identity, family ties, sovereignty, and the incomplete overlap of all of these features with reservation boundaries (Shepherd, 2016; p. 125). Tribes across the United States define sovereignty and its connection with self-determination differently, meaning that great care must be taken to avoid homogenous interpretations and assumptions (Wilkins, 2008).

Unquestionably, much of the ambiguity about sovereignty – and what makes it particularly important to understand as a central feature of perceptions of safety and opportunities to improve safety in reservation communities – is that it arises from active hostility to American Indians. Federal, state, and local governments and communities have consistently been aggressive to sovereignty and the integrity and protection it affords for American Indian communities’ territories, cultural identity, self-

determination, and access to resources (Deloria & Lytle, 1984; Wilkins & Lomawaima, 2001; D. Treuer, 2012; Grossman, 2017). As Indian law scholar Pommersheim (2010, p. 50) observed, even without constitutional authority or legislative direction to push them in this direction, the courts have become “increasingly inimical to tribal sovereignty, especially in regard to tribal authority over non-Indians.”

In this context, the figurative and literal boundaries of reservations and of tribes’ jurisdictions to formulate, implement, and enforce safety-related policies and plans are constantly questioned and contested by federal, state, and local government authorities. These relationships remain an area rife with ambiguity and inconsistency (Matha, 2016).

An essential part of the shift in tribal authority is Public Law 280 (PL 280), the influence of which cannot be overstated when it comes to the **enforcement** aspects of roadway safety in many reservations. For sixteen states, this 1953 federal law reset the level to which tribal, state, and county entities do and do not have rights and jurisdiction in law enforcement and the court system. Generally considered an erosion of tribal control over public safety and justice within reservation borders (Eid & Doyle, 2010), it was created in 1953 during the Eisenhower Administration “unilaterally.... without tribal consent or input,” and turned what had previously been federal civil and criminal jurisdiction in reservations over to states (French, 2015; p. 57). Minnesota, the location of our case studies, is one of the “mandatory” PL 280 states, meaning that the state has full jurisdiction on reservations, with the exception of Red Lake reservation.

PL 280 means that state and county police *can* make arrests for felonies and misdemeanors in reservations (French, 2015), but the reverse is not necessarily – and probably not – true. Tribal law enforcement has variable levels of authority on and off the reservation. Repeated court cases have established that generally tribal police have jurisdiction over crimes committed by Indians against Indians, but *not* over crimes committed by non-Indians against Indians or other non-Indians, even when they occur on their reservations (Wakeling et al., 2000). The immunities these gaps provide has long been recognized. Supreme Court Justice Antonin Scalia highlighted the continuing opportunities for non-Indians to operate in reservations without having to get involved with tribal law enforcement or courts, by advising, “Just stay on the good roads, and you’ve got nothing to worry about” (quoted by Lash, 1997). While Justice Scalia was referring to the topic of this research – roads – it seems this statement is legal history in a nutshell when it comes to non-Indians taking opportunities to skirt and subvert tribal sovereignty. Despite increasing public attention to the problem that non-natives who sexually assault American Indian women in reservations often cannot be charged without federal intervention (Erdrich 2013; Tharp, 2014), loopholes remain.

Fletcher, Fort, and Singel (2010; p. 43), leaders of the Indigenous Law and Policy Center, summarize the practical complexities of law enforcement in reservations succinctly:

Jurisdiction in Indian country is complicated by federal laws, policies, and court decisions. Police officers in Indian country are asked to navigate a formidable body of law to determine what authority they may wield in a variety of situations. Officers...must consider the location of the crime, their current location, the political identity of the alleged perpetrator, the political identity of the alleged victim, and the nature

of the alleged crime before deciding what action, if any, they are authorized to take.... All questions relating to Indian country criminal jurisdiction must begin with determining whether the alleged crime occurred in Indian country.... While this appears straightforward, the allotment of Indian lands... and the subsequent settlement of large portions of reservation lands by non-Indians have created a confusing 'patchwork' of land ownership.

There are options for improving inter-jurisdictional cooperation to close these gaps and improve public safety options in reservations and surrounding areas. Through cooperative agreements – such as deputation, cross-deputation, or mutual aid agreements – tribal, county, and state police departments *may* expand the powers of each to enforce laws across a region, regardless of the location and legal identity of the perpetrator. However, “the norm is usually to allow non-Indian law enforcement onto the reservation to make arrests, while Indian police do not have the same authority off the reservation” (French, 2015; p. 70). A sheriff’s office may decline to deputize or otherwise limit the reach of tribal law enforcement “for political reasons or general distrust” (Fletcher et al., 2010), which is a dynamic that we observed in some of the case studies described below.

Many of the law enforcement leaders had a sophisticated knowledge of this complicated jurisdictional terrain. This was true of all of the law enforcement professionals working for tribal governments and many of the law enforcement leaders of other jurisdictions. Notably, they seemed to have been able to gather this knowledge *only* through long-term, immersive experience with the details of this complex legal terrain. For the purposes of this report, the important thing to note is that ***options for enforcement approaches to roadway safety in reservations are complicated***: Law enforcement authority is diffuse, often contested, frequently confusing, and sometimes seems to stand in the way of safety.

1.4 EMPIRICAL AND METHODOLOGICAL DEVELOPMENT PRIORITIES

Collectively, previous studies indicate the complexity of the issues and multiple possible explanations for elevated crash risks among American Indians and on reservations. While important, they are insufficient in number, diversity of research methods, and range of disciplinary perspectives to support comprehensive understanding of the nature of the problem, its sources, and what might be the most effective interventions to address it. In addition, these previous studies have frequently not been adequately attentive to issues of sovereignty and interdependence among jurisdictions.

Increasing not only the number of research projects, but also the **diversity of data sources, research methods, and range of disciplinary perspectives** will better support a comprehensive response to this critical issue. In addition, **we need more research that is driven by the questions, knowledge, and priorities of tribal governments and reservation residents**; this is both a matter of respect for sovereignty and self-determination and a matter of designing solutions based on the most informed, knowledgeable perspectives.

To reduce fatalities and life-changing injuries in American Indian populations and on American Indian lands, we need a more detailed and contextualized understanding of the nature of the elevated crash rate, its sources, and what might be the most effective interventions to address them. Such information

can advance more strategic roadway safety policy design and implementation by tribal, state, and national governments.

1.4.1 Complementing crash statistics with situated knowledge of risks

Most prior research relied heavily on quantitative, epidemiological analyses of patterns, which identify key causal explanations for roadway fatalities and injuries at an aggregate population level for the entire American Indian and Alaska Native population of the United States. This is typical of an emerging research topic but presents several limitations (Andrew & Krouse, 1995). Most importantly, it overlooks the great heterogeneity within this group. Such studies associate ethnicity and crashes without looking at other features of the context, such as the affected individuals' socioeconomic status, educational level, or access to health care. Collectively, these studies offer an incomplete view of the dynamics occurring in specific tribal communities and locations, neglecting the heterogeneity and specificity of the policy, cultural, or geospatial features of the problems and potential solutions (Banerji and Inuit and Métis Health Committee, 2012; Pollack et al., 2012).

The traditional practice for assessing roadway safety risks is to use data collected by police departments and submitted to state and federal agencies. Common places to access that data are through NHTSA's Fatalities and Accident Reporting System (FARS, <http://www.nhtsa.gov/FARS>), CDC's Web-based Injury Statistics Query and Reporting System (WISQARS, <http://www.cdc.gov/injury/wisqars/>), and the state equivalents of those systems (e.g., MNCMAT and MIDAS for Minnesota). These databases provide critical information about high-incidence crash sites and are thus invaluable for establishing priorities for roadway safety improvements.

However, the view these data provide of hazards and risks is limited in several ways:

- There is a low absolute volume of traffic in rural areas generally, so the data available for analysis may not provide a very accurate picture of hazards (Nguyen, Munnich, & Douma, 2014).
- They show only crashes that were reported, but there are a number of challenges and needs associated with data reporting, including production, exchange, ownership, and interpretation (Cochran et al., 2008). While fatalities are consistently covered in the FARS database, many other crashes are not reported and/or the quality of data reported is poor. These data issues include uneven crash reporting on reservation lands, failure to relay crash-caused deaths to statewide fatality accident reporting systems, and failure to report missing pieces of potentially key information, for example regarding intoxication, the behavior of involved pedestrians or street lighting conditions (Pollack et al., 2012; Banerji & Inuit and Métis Health Committee, 2012; Bailey & Huft, 2008; Romano, Fell, & Voas, 2011).
- Practitioners clearly express a need for improved data sources and sharing. This emerged in the exploratory interviews we conducted in the initial stages of this research. Some tribal governments prefer not to share full incident data with other entities, and some who do share their data then have problems re-accessing and utilizing state-level crash data to produce safety

management plans. Numerous road engineering and planning managers whom we interviewed, in Minnesota and elsewhere, cannot obtain the crash data they need to identify and address safety issues from their own local police units, whether tribal or Bureau of Indian Affairs (BIA) police. Some tribal governments are concerned that that data they report to the state or federal government will be used for others' gain or to sully their reputations.

- Crash statistics point to incidents that have *already occurred*. There is also important information to be gained from people on the ground about how they perceive and seek to manage or avoid risks. By definition, crash statistics reflect crashes, which are important but do not necessarily reflect all of the important features relating to policy design, resource allocation, inter-jurisdictional coordination, and other features of safety management.

1.4.2 Expanding data sources

In addition, data quality issues are a barrier to traditional data analysis methods for examining crashes. Under-reporting of MVCs in tribal lands affecting American Indians anywhere is a well-recognized problem (Li et al., 2016; Ragland 2016). Data issues include uneven crash reporting in reservation lands, as described above. Poor data quality impedes analyzing and addressing the causes of safety concerns on roadways in reservations. Explanations for poor data quality include limited human resources for law enforcement (and thus limited crash reporting) and crash data analysis in tribal governments, lack of standardization in crash reporting, and a variety of boundary issues in relationships between tribal governments and state governments (Li et al., 2016).

Even when data collection is comprehensive and the data are shared, the data do not provide complete explanations. Crash reports are often missing key information about the context that might be relevant to developing appropriate policies, for example, whether to prioritize additional signage, improved lighting, better snow and ice clearing, or more education about driving while impaired or distracted. Notably, these reports often omit any information about whether or not an accident occurred in a reservation.

This is important information for improving policy: different strategies are required to address risks that are geospatially located (e.g., regions with icy winter roadway conditions) versus those that are associated with particular socioeconomic and cultural groups (e.g., low seatbelt usage rates among the American Indian population as a whole). Neither a geospatial/territorial/jurisdictional nor a cultural/socioeconomic perspective is sufficient to explain and address fatalities, since American Indian people, groups, reservations, and tribal governments are highly diverse.

Therefore, this study is designed to gather a more nuanced, contextualized picture of the causes of crash risks in particular locations, by using qualitative case study methodologies and data collection instruments, as detailed in Chapter 2 and Appendices A through C.

1.5 STUDY OBJECTIVES AND RESEARCH QUESTIONS

To address the gaps just identified, this research involves gathering data about how people who have immediate, direct knowledge of reservation roads perceive, manage, and recommend addressing roadway safety risks. The primary objectives of this study are to:

- provide a more nuanced, ground-level picture of roadway safety risks on tribal lands;
- use those results to produce better informed recommendations about programmatic and policy actions to improve roadway safety in reservations; and
- build long-term relationships with tribal governments around transportation issues, to support ongoing collaboration to improve safety and transportation systems in reservations.

To pursue these objectives, we investigated four research questions, shown schematically in Figure 1.3. Details about data sources shown in the schema – 102 interviews with key experts, brief surveys of 227 expert drivers or interested residents in 4 case study sites, 85 days of fieldwork on reservations, a national survey completed by 151 tribal and 45 state leaders from around the country, statistical data on crashes, and multiple consultations with tribal government partners – may be found in Chapter 2.

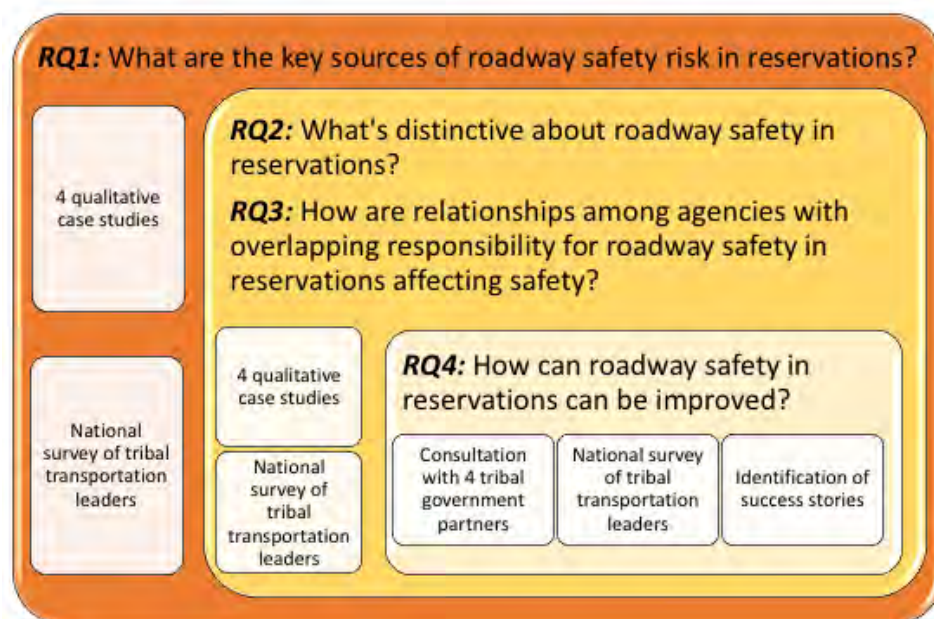


Figure 1.3 The four research questions of this study

RQ 1. *What are the key sources of roadway safety risk in reservations, according to people with direct knowledge of and responsibility for reservation roadway safety?*

To answer this question, we gathered data to gain a situated view from within these communities of the sources of risk and what interventions would be most pragmatic and effective. In particular, we sought data that are not typically available through crash reports, such as the following:

- General opinions on the quality of roads and roadway safety issues in the communities

- General perceptions of key sources of roadway safety risk relating to all “4Es” – engineering and road quality/maintenance, education and driving behavior, enforcement, and emergency medical response (EMS, including ambulance service and medical treatment for crash victims) – plus other environmental factors
- Patterns of risk avoidance that do not turn up in crash incidents: accounts of places, times, or conditions under which people avoid driving because of risk, other patterns of who is not driving (where, when) and explanations about why, and unreported accidents and near misses
- Opportunities, preferences, and safety concerns about getting around, regardless of mode of movement (on foot, bike, private vehicle, bus, etc.)
- Other features of driving behavior or culture by local residents and others passing through (e.g., speeding, knowledge of local conditions, impairment)
- Dark areas, icy spots, vegetation and poor visibility, or other navigation issues
- Institutional concerns, such as the ease, timeliness, or other aspects of gaining a response and service from law enforcement, emergency responders, snow plows, etc.

To answer this question, initially we conducted in-depth case studies of these topics in four reservations in Minnesota. We then had an opportunity to connect our initial findings to a study of the broader context of tribal transportation safety in the United States. We collaborated with the federal Tribal Transportation Assistance Program (TTAP) of the Federal Highway Administration (FHWA) to design and interpret results of a survey of tribal governments around the country to assess key safety concerns and needs. This survey incorporated questions about numerous risk concerns that had turned up in our case study data. The national survey results are presented in Chapter 3 (especially Table 3.1).

RQ 2. *What is distinctive about roadway safety in reservations, if anything, relative to other areas?*

It is vitally important to question whether reservation conditions are an explanation for the elevated MVC rates and MVC fatality rates for American Indians for two reasons. As stated above, the vast majority of American Indian people do not live or spend the majority of their time in reservations, making it highly problematic to assume that something about reservations explains the risk. Second, many reservations are rural in character, which begs the question of whether there is anything distinctive about crash risks in reservations versus any other part of the rural landscape of which they are a part.

The US DOT Strategic Plan for 2012-2016 identifies rural safety as a priority and calls for enhancing data, developing comprehensive safety strategies, and collaborating with stakeholders including tribal governments to improve safety levels. These areas generally have high crash fatality rates; 49% of all MVC fatalities in the United States in 2015 occurred in rural areas. The pattern of heightened risk in rural areas is even more pronounced in Minnesota, where 67% of all MVC fatalities in 2015 occurred in

rural areas (Insurance Institute for Highway Safety, 2016). However, not all tribal lands are rural (and not all rural areas are tribal land), and there may be distinctive features of areas that are both rural in nature and within reservation boundaries, so these relationships need further examination.

Thus, we specifically asked in all interviews whether the study participants saw anything distinctive about roadway safety in reservations. Where they asserted there was a difference, we asked them to express what they believed explained it. Analyses of these data produced especially interesting results, notably including differing perceptions among people with and without immediate, direct familiarity with reservations. The case study results are summarized in Chapter 4.

RQ 3. How are relationships among agencies with overlapping responsibility for roadway safety in reservations affecting safety?

Our early data collection pointed to the importance of inter-agency coordination for transportation safety. Effective boundary-spanning work across domains of expertise (e.g., enforcement and driver education) and across jurisdictional boundaries (e.g., between tribal, county, and state governments that have responsibility for intersecting parts of the complex road network on reservations) is vital to making progress on complex community and policy issues (Buchanan, 1992; Quick & Feldman, 2014; Weber & Khademanian, 2008), such as roadway safety. Therefore, it is important to investigate the integration of work on the full array of the “4Es” of road safety. In addition, research on the particular status, challenges, and opportunities related to tribal governments and inter-jurisdictional coordination has very rarely been done around any policy issue, transportation or otherwise (Ronquillo, 2011).

Therefore, we modified the data collection plan to gather and analyze data on two aspects of inter-agency coordination:

1. coordination among units that focused on different aspects of the “4Es” of roadway safety; and
2. coordination among overlapping jurisdictions with some scope of responsibility for roadway safety within the reservation boundaries (tribal, township, city, county, state, and federal).

RQ 4. How can roadway safety in reservations be improved?

Recommendations for improving roadway safety in reservations are summarized in Chapter 5. One of the primary objectives of this study is to use the data to produce better informed recommendations about programmatic and policy actions to improve roadway safety in reservations. As policy and management scholars, we analyzed the case study and national data about key sources of roadway safety risk in reservations, the distinctiveness of reservations relative to other rural areas, and the quality of inter-agency coordination on safety. We then used that analysis to produce recommendations for program and policy improvements. We also asked study participants with special expertise in roadway safety to share their recommendations and identified positive examples of effective interventions and collaboration in the data.

1.6 POLICY AND PROGRAM CONTRIBUTIONS

Fortunately, policy and research attention to the issue of roadway safety in reservations is increasing. The FAST Act (Fixing America's Surface Transportation Act), the major federal highway bill passed in December 2015, recognizes and demands studies on two key aspects of reservation roadway safety, to which this study contributed. The FAST Act mandated that a study be done immediately to improve the quality of transportation safety data collection and that a report be made within two years of the major causes of roadway safety risk in reservations. As mentioned, as part of this project, the researchers collaborated with the Tribal Transportation program of the Federal Highway Administration to design and analyze data from the survey.

In Minnesota, where the case studies were conducted, these research findings can help to address a gap in the state's current Comprehensive Highway Safety Plan. This plan makes no mention of working with tribal governments. There are significant overlaps between commonly found explanations for the elevated crash rate among American Indian populations and lands and the priorities identified in the state plan, namely in the areas of reducing impaired driving, increasing seatbelt use, improving highway design, and keeping vehicles from running off the roadway. The findings of this study can inform efforts by the Minnesota Department of Transportation Office of Traffic, Safety, and Technology to strengthen its goals and activities to improve transportation safety in reservations.

CHAPTER 2: RESEARCH DESIGN AND METHODS

This chapter describes methods developed through this project for identifying roadway safety priorities in American Indian reservations. The methods are tailored to answer the research questions stated in Chapter 1.5.

These data collection resources are for tribal governments as well as researchers. These methods were developed through collaborative research with four tribal governments and the Advocacy Council for Tribal Transportation in Minnesota. They involve doing qualitative interviews with key stakeholders and a simple community survey method using maps to gather residents' knowledge of local road safety hazards. These methods have already proved useful in generating new insights on key safety risks in American Indian reservations, particularly relating to pedestrian and bicyclist safety, policy design and implementation, and inter-agency collaboration. In the associated appendices, we share the list of types of key stakeholders (Appendix A), interview questions (Appendix B), and the community survey methods (Appendix C). The tools laid out in this chapter and the appendices could be used by tribal governments and others to prepare Tribal Safety Plans, to identify focal areas for Road Safety Audits, and to improve transportation and safety policies and implementation.

2.1 QUALITATIVE, PARTICIPATORY RESEARCH APPROACH

Qualitative research methods were used because they are particularly well-suited to analyzing people's perceptions, values, and preferences (Agar, 1980; Bernard, 2011; Feldman, 1995; Hennink, Hutter, & Bailey, 2010), which are essential kinds of data for understanding how people interpret and respond to risk. While qualitative methods are relatively rarely used in roadway safety research, they are particularly apt for analyzing organizational processes and practices, which are important features of the context for policy and program interventions to address safety. In addition, as described in Chapter 1.4, expanded methodologies are needed to discover new sources of data.

These data approaches offer three advantages:

- a) Qualitative methods generate new types of data to address data limitations of typical crash statistics;
- b) Qualitative data complement what we can learn from the more commonly used geospatial and statistical data on crashes and fatalities that have already occurred with local knowledge of road conditions and other risks; and
- c) Qualitative methods can be used to facilitate collaboration among tribal, county, state, and federal entities.

The paucity of American Indian scholars' and community voices in prior research about reservation roadway safety issues is an ethical, empirical, and methodological problem. Gaps in the existing body of knowledge on roadway safety in American Indian reservations are probably made more acute by the historically limited engagement of American Indians as leaders or partners in research on American

Indian transportation safety issues (Andrew & Krouse, 1995). Previous studies have found a need to build partnerships and institutional capacity to enhance knowledge, tools (e.g., road safety audits), and collaborations to address tribal transportation safety needs (Raynault et al., 2010; Bailey & Huft, 2008; Zaloshnja et al., 2003; Sequist et al., 2011).

In recognition of these concerns, the authors worked closely with transportation safety leaders in tribal communities to undertake this research. This approach allowed the authors to engage more appropriately with American Indian communities to pursue research questions of concern to them, to respect their knowledge and tribal sovereignty, and to gather a more complete picture of stakeholders' perspectives on risks and effective options for improving transportation safety.

2.2 COLLABORATION WITH TRIBES AND CASE STUDY SELECTION

We conducted this research in collaboration with transportation planning, law enforcement, emergency medical services (EMS), and injury prevention leaders from American Indian reservation communities in Minnesota. As mentioned, one of the study objectives was to build long-term relationships with tribal governments around transportation issues, to support ongoing collaboration to improve safety and transportation systems in reservations. Creating and sustaining these partnerships – deciding on the study sites, securing permission from their tribal governments, and settling on the specific research designs for those sites are the necessary initial tasks of this work plan. This scoping and relationship-building process is not only necessary to the research project, but also is itself a source of valuable research data and insights, in the tradition of participatory research approaches (LeCompte & Schensul, 2010).

Involvement from the American Indian leaders with direct responsibility for and intimate knowledge of reservation roads, law enforcement, injury prevention, and emergency response provides indispensable information. ***The authors' collaborators on this research, and at least 80% of the 400 study participants, identify as American Indian.*** (Some of these individuals identify themselves in multiple ways, i.e. as American Indian and Latinx, and in some regions of the country people identify as Native American.) The remainder of study participants are staff from county and federal agencies who interface with reservation road safety policy, whom we have also interviewed as key stakeholders. These collaborators and study participants guided us to develop better interview questions and to interpret data about the contexts and complex relationships of causality of the high crash rate; constraints on exchanging and interpreting data; and needs for developing and deploying effective management and policies.

In the first year of the project, the researchers reached out to 11 tribal governments in Minnesota through Minnesota's Advocacy Council on Tribal Transportation (ACTT) to introduce ourselves, describe options for the project, dialogue about ways to re-scope the project to be more interesting to them, and answer questions. ACTT is a clearinghouse for information exchange, policy prioritization, and advocacy for tribal transportation issues in Minnesota, and is comprised of the lead transportation managers of 11 tribal governments in Minnesota, as well as representatives of the Minnesota Indian Affairs Council (a governmental body), the Bureau of Indian Affairs, the regional Tribal Transportation Technical

Assistance Program, USDOT and Minnesota Department of Transportation, US Forest Service, and Minnesota cities and counties.

Four tribal governments –Red Lake Band of Chippewa, Fond du Lac Band of Lake Superior Chippewa, Mille Lacs Band of Ojibwe, and Leech Lake Band of Ojibwe – asked to collaborate with the researchers on this project. Other tribal governments either did not respond to several invitations to discuss the opportunity to collaborate, were so small that it made it difficult to distinguish reservation- and non-reservation conditions or to protect the confidentiality of study participants, or were undergoing staffing or leadership changes that meant the timing of this study was not conducive to their work. Thus, these four reservations comprise the four case studies in Chapter 4.

The most important guiding principle was to work with willing partners and not insert ourselves into reservation communities where the researchers' skills or interest were not needed or welcome. There are recognized methodologies for selecting case study sites (Eisenhardt, 1989; Yin, 2013), but in this context the overriding criteria was an interest in partnership. Voluntary participation is particularly vital in the context of research about reservations and American Indian communities. Nationwide there have been many past breaches of trust committed by researchers working with American Indian communities, including violations of the privacy and protection of the well-being of research participants (Cochran et al., 2008).

Mindful of this history and wanting to build respectful, responsive relationships with tribal collaborators, the authors followed the guidance of the National Congress of American Indians' Policy Research Center regarding good research practices. In addition to checking in often during data collection and analysis with our counterparts in tribal governments, we also consulted with entities that represent or serve tribal governments (e.g., the Tribal Transportation Assistance Program offices of the Federal Highway Administration; the Minnesota Advocacy Council on Tribal Transportation; members of ABE80, which is the Tribal Transportation standing committee of the Transportation Research Board [TRB]; and SMS, which is the Tribal Transportation Safety Management Systems committee of Lifesavers). In these interactions, the authors actively sought guidance and listened for feedback, implicit as well as explicit, about the content of our work (e.g., the questions they would like to have us pursue) and the way we are approaching these relationships. Our aim was to conduct the research in ways that are respectful and responsive, build positive relationships, and enhance the relevance and contributions of this project to these communities.

The key liaison or liaisons for each of the four collaborating tribal governments reviewed their own reservation's case study and Chapters 1, 2, 3, and 5 prior to this report being published. Each tribal government was asked: (1) to provide corrections and updates to the draft report, and (2) for their preference as to whether their case study be included in the final report or be kept confidential for their tribe's own use. Every tribe provided permission to have their case study shared for others to learn from. Each tribe requested corrections (e.g., the Ojibwe spelling of place names, updated tribal emblems) and minor updates (e.g., status updates or photos of recently completed projects), all of which the authors made.

2.3 PROTECTION OF HUMAN SUBJECTS

Voluntary participation applies not only to partnerships with the tribal governments, but to the individual study participants. In accordance with the researchers' commitment to the ethical conduct of social science researchers and in compliance with a protocol for the protection of human subjects developed and approved by the Institutional Research Board of the University of Minnesota (IRB protocol 1407S52686), interviews were conducted exclusively with adults aged 18 years or older who provided voluntary, informed consent to participate. Confidentiality was promised to assure that study participants could speak freely, including to share their criticisms of public engagement efforts. To protect their confidentiality, quotations from study participants are not attributed by name, and there is no list of study participants in this report.

In addition, a national survey (described further in Chapter 2.5, below) was conducted by the Federal Highway Administration (FHWA) under their agency's confidentiality and security protocols, which involved gaining permission from the federal Office of Management and Budget. Subject identifying data were scrubbed from that dataset before the FHWA shared it.

2.4 QUALITATIVE CASE STUDY DATA COLLECTION INSTRUMENTS AND SOURCES

For the case studies, we developed, tested, and refined three basic methodological components: 1) a typology of key stakeholders; 2) questions for interviews with key stakeholders; and 3) map-initiated dialogues with interested reservation residents and expert drivers.

Research in other policy domains that also involve risk and complexity indicates that including diverse and even antagonistic ways of knowing from an array of stakeholders in participatory risk appraisal and planning supports richer understandings of problems and better informed, more effective risk governance (Bier, 2001; Frewer, 2004; Klinke & Renn, 2012; Quick & Feldman, 2014). For example, Minge (2013) used this approach in a study of the role of EMS response in reducing MVC fatalities in high-risk rural areas, by intentionally gathering perspectives from state departments of transportation, EMS agencies, and other stakeholders.

Therefore, the goal for each site was to interview people representing diverse stakeholder positions (Bryson, 2004), so the first resource that we developed for this study was a list of diverse stakeholders to consult with to gather their perspectives, followed by a specific survey, "virtual ride-alongs," and interview instruments that we developed for gathering the data.

The **typology of five key types of stakeholders** (Appendix A) is an ideal list of the key kinds of persons from whom input should be collected. They include not only 1) interested members of the general reservation population and 2) the lead managers or experts for the reservation in the "4E" areas, but also 3) "Expert drivers," who could be any kind of professional driver who knows the road system particularly well and frequently must drive anywhere they are called, in a variety of conditions. This is the most valuable innovation we have discovered through testing different methods. These drivers are a tremendous wealth of information (for example, about bad curves, icy conditions, places to watch out

for pedestrians or animals in the road, etc.), yet are often overlooked in road safety planning. The suggested protocol for interviewing them is in Appendix C, as described below. The other stakeholder types are 4) managers and experts from overlapping or related jurisdictions, from the township to the federal level, as relevant for the reservation; and 5) managers of centers of activity where there is a great deal of coming and going (e.g., schools, community clinics or centers, casinos).

The recommended **interview script for the “4E” experts** – the managers for engineering, education, EMS, and enforcement from the tribal government and related other jurisdictions – is found in Appendix B. A few important features of the protocol should be noted.

First, questions are asked in an open-ended way, not in a leading way that channels or confines responses. For example, it would not be appropriate to ask, “What should we do about drunk driving by reservation residents?” because it would bias responses, not to mention that many people might quite reasonably be offended by the prejudice embedded in that question. Instead, we might follow up with a question about features that the speaker did not spontaneously bring up, such as by asking, “We noticed that some people expect reckless driving (or seatbelt use, or dark and icy roads) to be an issue on the reservation. We don’t want to jump to that conclusion. We noticed that you did not mention it; is that because you don’t observe it to be a problem?”

Second, we asked very broadly about safety on the roads so that we would not foreclose important data in this exploratory study. An example of this is that we intentionally asked about safety on the roads, without narrowing to focus on vehicles, and recommend that others using this tool do the same unless and until it has been established that there are no important pedestrian or bicycle safety issues. Third, we utilized a “snowball” method (Atkinson & Flint, 2001) of asking each study participant to identify and introduce us to others. Interviews occurred in person or by phone. Typically, interviews lasted 35-60 minutes. Permission to audiotape interviews was granted in about 80% of interviews. All recorded interviews were

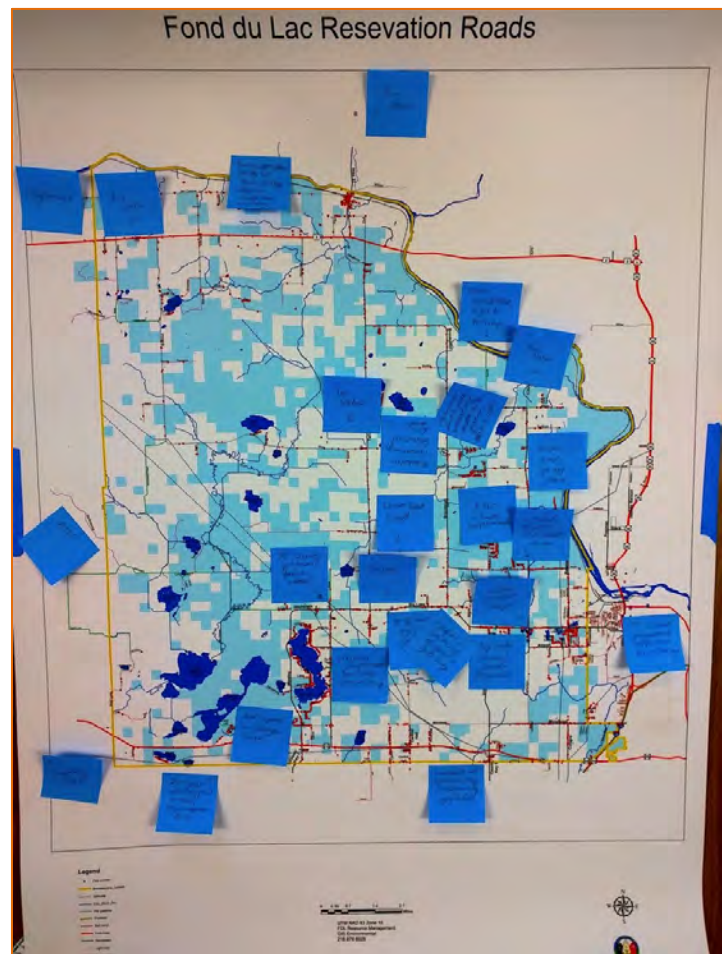


Figure 2.1 Map mark-up of high-risk locations identified by expert drivers on the Fond du Lac reservation



Figure 2.2 Conducting brief surveys with interested residents at community gatherings

Top to bottom: Health fair in Red Lake reservation, health fair in Mille Lacs reservations, and pow wow in Leech Lake reservation.

Photos by Guillermo Narváez or Kathy Quick.

other tribes in the region (at the biannual Minnesota Tribal Transportation Summit), in national venues where there is a high concentration of interested parties, such as podium sessions sponsored by the Standing Committee on Native American Transportation Issues (ABE80) at the Transportation Research Board annual conference, a meeting of the Safety Management System (SMS) Steering Committee of

transcribed. For non-transcribed interviews, the researchers took notes during the conversation and filled out these notes with additional details from memory shortly after the conversation concluded.

The recommended protocol for **brief surveys of expert drivers and interested members of the general public** is in Appendix C. We used a detailed road map of the reservation and adjacent areas as a boundary object for conversation and recording some input. We used it to conduct a kind of virtual ride-along with expert drivers – school bus and public drivers; casino shuttle drivers; propane delivery drivers; visiting health care providers, road crews, and emergency responders – who know the reservation roadway system particularly well. Working with one to three drivers at a time, we posted sticky notes on the map to record their insights and engage them in dialogue to make sure we were capturing their perspectives (Figure 2.1).

We used a similar method of using a photocopied map to initiate and record input from interested members of the reservation public, sometimes in very short interactions, by tabling at community fairs or at the entrance of a major center of activity (e.g., a school or community clinic), with the invitation and permission of the organizers (Figure 2.2).

The authors have received consistently positive feedback from practitioners and scholars working on roadway safety in reservations about the necessity of developing and the value of using these tools. This feedback was gathered in workshops with our partners and

FHWA's Tribal Transportation Program at the annual Lifesavers conference on roadway safety, a National Tribal Transportation Conference, and the scholars' track of the National Congress of American Indians. We also presented the methodologies and preliminary research findings in a national webinar sponsored by the National Academy of Sciences and attended by 235 people.

While these methods are not typically found in this community of scholars and practitioners, several scholars are now developing them. For example, the California Tribal Transportation Assistance Program (TTAP) program has begun trying out what they describe as "crowdsourcing" to encourage reservation residents to post input about pedestrian safety onto maps that they have posted in two reservations (Ragland, 2016). The California TTAP approach is less systematic than the methods we have developed for this project, but also has the potential to be developed further.

All told, between October 2013 and July 2018, the authors spent 90 researcher days of fieldwork in reservations in Minnesota or in meetings of the Minnesota Advocacy Council on Tribal Transportation. By "researcher day," we mean that one of the two authors conducted fieldwork on a given reservation for three to ten consecutive hours. Sometimes we did the work together and sometimes separately. In 2013 or early 2014, we visited all 11 reservations in the state and met with tribal transportation leaders on 7 reservations to discuss safety concerns. When four of the tribal governments whom we had visited or spoken with became partners for the reservation case studies, we returned to these reservations repeatedly to conduct extensive additional fieldwork. (To be clear, these 90 days are a fraction of the researcher time spent on the project; they do not include phone interviews, reviewing policy documents, and extensive time devoted to data analysis.)

In addition, we participated and gathered notes in 15 meetings or dialogues regarding tribal transportation concerns, including four national policy summits or research meetings on tribal transportation, ongoing participation in the ACTT group, two tribal safety plan team meetings, and the Minnesota and Wisconsin Tribal Transportation Safety Summits.

Being present for conversations among tribal transportation leaders and on the reservations was critically important for building relationships, understanding the nuances of these policy issues, and getting to know the context of the case study reservations. While on the reservations, we traveled the roads and got to know the community, often in the company of the tribe's engineering, maintenance, enforcement, or emergency response leaders. We also conducted interviews in-person, did actual or virtual (with map) ride-alongs with expert drivers, and participated in 9 community events.

Altogether, we conducted 102 semi-structured interviews in person or by phone, usually with individual stakeholders, but occasionally with two to three people at a time. We also conducted brief surveys of 220 community members at nine community events on the four case study reservations, and conducted four focus groups involving seven additional expert drivers on the four case study reservations.

2.5 NATIONAL SURVEY DATA COLLECTION INSTRUMENT AND SOURCES

One of the data sources for this study is the Tribal Transportation Safety Data Survey (<https://survey.max.gov/586164>), conducted in 2016. The authors helped to design this online survey of all federally recognized tribal governments, transportation leaders of the Bureau of Indian Affairs offices, and safety engineers or tribal liaisons for transportation departments of all US states. The survey was done in fulfillment of the FAST Act, passed in 2015, which mandated two studies on tribal transportation: on reservation roadway safety data quality issues and on the major causes of roadway safety risk in reservations. In 2016, the survey was made available through a web-based form, an email questionnaire, and by inviting tribes to call FHWA's Tribal Transportation Program. Tribal and state government officials were asked to respond to a set of survey questions asking about their crash data collection, sharing, and use.

The authors participated in designing the national surveys of tribal and state government leaders. Our objective was to expand beyond our case studies and literature review to examine what tribes across the United States identified as key sources of risk and priorities for safety improvement. The survey and a subsequent report to Congress were developed by Federal Highway Administration (2017), with assistance from the Tribal Transportation Safety Management System Steering Committee to develop and distribute the survey. Through cooperation with the FHWA team, the authors were able to insert some questions and access the data (with subject identifiers scrubbed for confidentiality).

The survey has intrinsic value for providing stronger evidence about priority needs for improving reservation roadway safety. It also allows us to evaluate how the findings from the in-depth case studies align with national patterns. Details on respondents and questions are found in the introduction of Chapter 3.

2.6 DATA ANALYSIS

Analyzing data from diverse perspectives allowed the research team to triangulate among various interpretations of the roadway safety risks (Altheide & Johnson, 1994; Yin, 2013) and to perform comparative analysis across the four case studies (Eisenhardt, 1989; Yin, 2013).

Our analysis of these data involved identifying key themes. We identified many of the themes *a priori*, led by the review of the literature and initial conversations with key practitioners. These themes included, for example, engineering issues, driver behavior issues, and observations about anything that is distinctive about reservations. However, we also inductively identified new themes by listening to issues that were consistently raised during the interviews. Notably, issues relating to coordination among jurisdictions were so prominent in the first 10-12 interviews that we began coding the data for this topic, and indeed inserted into our data collection instruments an additional, open-ended question relating to inter-jurisdictional coordination in order to gather more data.

Within both the *a priori* and the inductively identified themes, we analyzed the data for consistency and for divergence. In the results presented in the following chapters, we emphasize areas in which we

found strong patterns of convergence in the data, particularly strong consistencies in what study participants identified as sources of risk. However, we also present some areas in which there is divergent data. There are two important reasons to pay attention to divergence, both relating to what Jick (1979, 607) describes as “an opportunity for enriching the explanation.” First, sometimes ambiguities in the data point to areas where more research is needed. Second, if the divergence seems to be systematic – for example, if there are consistent divergences between tribal government and adjacent jurisdictions – those differences in perspective may call for more communication or coordination.

CHAPTER 3: NATIONAL SURVEY OF TRIBES' AND STATES' RESERVATION ROADWAY SAFETY PRIORITIES³

American Indians nationally experience distressingly high incidences of fatalities and severe injuries from motor vehicle crashes (MVCs) at rates higher than any other racial or ethnic group in the United States, as described in the preceding chapters of this report. What happens on reservations coincides in part with this national phenomenon. To improve roadway safety for American Indians, it is therefore especially useful to gather perspectives from the most informed, on-the-ground safety specialists working in reservations about what the key roadway safety hazards and opportunities are.

This research project included helping to create and analyze the results of the Tribal Transportation Safety Data Survey (<https://survey.max.gov/586164>). Conducted in 2016, the survey was sent to the FHWA Tribal Transportation Program's lead contact for all federally recognized tribal governments, to transportation leaders for the Bureau of Indian Affairs offices, and safety engineers or tribal liaisons for transportation departments of all US states. The US Federal Highway Administration's Office (FHWA) was charged by congressional mandate to conduct a study and thus led the creation of the survey and administered it. We collaborated with them to include a few questions targeted to address concerns and knowledge gaps we had identified in the literature review and our preliminary case study analysis, as well as to share our methodological expertise in social science data collection and analysis. While these data were actually collected after and informed by the case studies presented in the next chapters of this report, we present them here first as a foundational, big-picture context of roadway safety issues in reservations across the United States as a whole.

The survey was conducted in 2016. All federally recognized tribal governments, transportation leaders for the Bureau of Indian Affairs offices, and safety engineers or tribal liaisons for transportation departments of all US states were invited to participate. The responses received represented 151 tribal governments, primarily from tribal police, BIA law enforcement, and tribal departments of transportation. In addition, 45 individuals from 22 state governments responded to the survey. Each respondent was given a choice about whether to complete each of four separate sections relating to crash data collection (15 questions), crash data sharing (8 questions), safety data use (8 questions), and roadway (basemap) data. All questions were voluntary, so the total number of tribes or states responding to any given survey question were variable.

³ Co-PIs Quick and Narváez gratefully acknowledge collaboration with Adam Larsen to develop this chapter. Larsen administered and curated data collection for the survey. Quick and Narváez then interpreted the survey data to create a previous version of this chapter, which we then shared with Larsen. Together, the three of us improved and revised the chapter to create a conference paper co-authored by all three of us. Some of the new, mutually created content of the conference paper was then worked back into this chapter.

3.1 TRIBAL GOVERNMENTS' HIGHEST AREAS OF CONCERN

There are 573 federally recognized tribes in the continental US and Alaska (Bureau of Indian Affairs, 2018). Their reservations are diverse in terms of features expected to influence roadway safety, such as their terrain, resources, inter-connection with other transportation networks, weather conditions, and size. In Alaska, for example, tribes do not have reservations, and roadways are not viable means for transportation for much of the year, so native community leaders often need to remind national policy-makers of the importance of airstrips and other non-road infrastructure to connect them with cities and services (US Senate Committee on Indian Affairs, 2014). Despite the great cultural, geographic, and institutional diversity among tribes and their reservations, however, the survey found several strong

convergences in areas of concerns, opportunities, and need.

The first question was open-ended: ***What are your primary concerns related to transportation safety for your tribe?*** These responses are telling because they were what tribal government representatives identified in their own terms as their top-of-mind concerns regarding roadway safety. Figure 3.1 is a word cloud representing the frequency of issues named by survey respondents from tribal governments. To create it, the researchers read all responses to this open-ended question and simplified like terms into common terms. For example, responses referencing drunk driving, impairment, drinking and driving, impaired driving, drugged driving, DUI, and DWI were all categorized as “impaired driving.”

In a subsequent question, respondents were asked to



Figure 3.1 Frequency of tribal governments' self-identified roadway safety priorities

select their **top** concerns from a menu of the key roadway safety risks for American Indians and Alaska Natives and for reservation environments. The selection options were pre-determined by FHWA staff, the authors of this research, and a group of tribal transportation safety scholars and practitioners with whom FHWA consulted. Thus, they reflected key concerns previously identified among practitioners and in the academic literature, including the top four factors in American Indian traffic fatalities (regardless of location, on or off reservation) identified in the 2011-2015 FARS data (NHTSA, 2017, & Insurance Institute for Highway Safety, 2016, described in Table 1.1): the lack of proper seatbelt or child seat restraints (found in 47% of all American Indian traffic fatalities), alcohol-impaired driving (42%), speeding (33%), and being a pedestrian (19%).

Respondents were asked, but not forced, to choose their top three concerns, as well as given a chance to specify other top issues. Some respondents found it difficult to narrow their choices, given the magnitude of concerns they are facing, as exemplified by several who wrote comments along the lines of, “Only three?” in the “other” response area. Figure 3.2 is weighted to three points per respondent (e.g., 3 points for the item if they selected only one item, or 0.5 points for each item if they selected six).

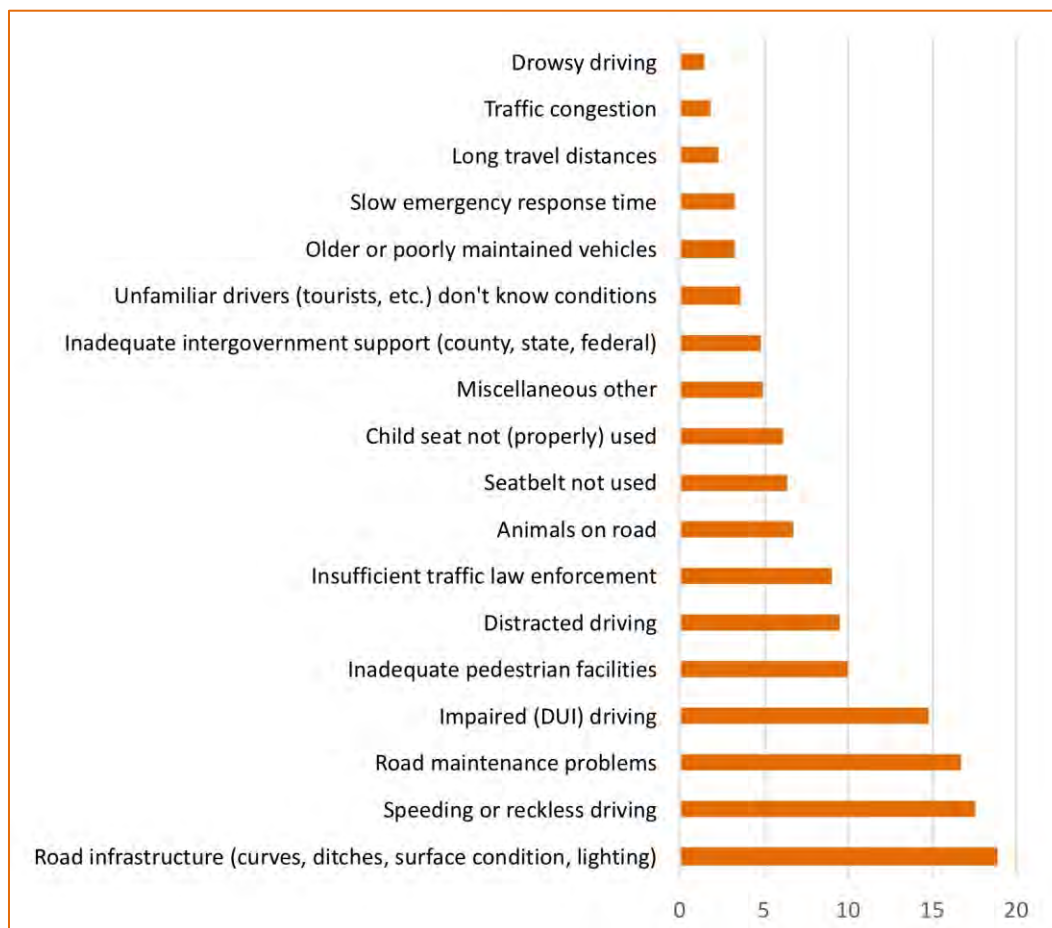


Figure 3.2 Ranking of tribal governments' highest concerns from a menu of roadway safety issues

Tribal leaders' initial, open-ended responses and their selection of top priorities from the pre-set menu align closely. This is **positive** because it suggests that the previously existing understandings expressed by policy leaders and found in the research literature *do* closely parallel the perceptions of transportation safety leaders with the most intimate knowledge of the conditions in their reservations. From these two ways of asking the question, several high-priority areas emerge with a high level of consistency: **road engineering and repair** (road design, maintenance, signage, and lighting), **driver behavior** (impaired driving, speeding, and distracted driving), **vulnerable roadway users** (pedestrians, cyclists, and children), and **restraint use** (seatbelt or car seat) (Table 3.1).

Table 3.1 Highest roadway safety priorities identified by tribal governments in national survey.
(Number in parentheses is # of respondents naming the issue.)

Area of concern	Tribal government responses to open-ended question about priority concerns	Tribal governments' prioritization of pre-determined options
Consistently very high priorities		
Road quality (engineering and repair)	<ul style="list-style-type: none"> • Road maintenance and repair (34) • Roadway engineering (27) • Signage (15) • Lighting (9) • Dust control (5) 	1 st most frequently selected as top priority: Road infrastructure (curves, ditches, surface conditions, lighting) 3 rd most frequent: Road maintenance problems
Driver behavior	<ul style="list-style-type: none"> • Impaired driving (23) • Speeding (19) • Distracted driving (7) • Unlicensed driving (7) • Need more driver safety education (5) 	1 st most frequent (when combined): <ul style="list-style-type: none"> • Speeding or reckless driving • Impaired driving • Distracted driving
Vulnerable roadway users	<ul style="list-style-type: none"> • Pedestrians (23) • Bicyclists (8) • Children needing safe school access (5) • ATV users (5) • Child seat use (8) 	4 th most frequent: Inadequate pedestrian facilities
Restraint use (seatbelts, car seats)	<ul style="list-style-type: none"> • Seatbelt use, adult or child (22) • Child seat use (8) 	3 rd most frequent (when combined) <ul style="list-style-type: none"> • Seatbelt use • Child seats not properly used
High priorities		
Inter-jurisdictional coordination (among tribal, federal, state, local governments)	<ul style="list-style-type: none"> • Data consistency and sharing (20) • Other coordination issues: competing and misaligned priorities, challenges to sovereignty, conflicts or overlaps in enforcement, and communication (12) 	<u>Not</u> frequently selected as a top priority
Law enforcement	<ul style="list-style-type: none"> • Lack of complete safety laws, laws not being enforced, or inadequate resources for law enforcement activities (15) 	5 th most frequent top priority
Inconsistently or infrequently named priorities		
Resource constraints	<ul style="list-style-type: none"> • General budget shortfalls (8) • Inadequate maintenance equipment and law enforcement resources 	** Unclear. This was not one of the pre-set options provided for selection.
Emergency response	<ul style="list-style-type: none"> • Poor response time or quality (8) 	<u>Not</u> frequently selected as top priority.
Other	<i>Occasionally</i> identified: <ul style="list-style-type: none"> • Animals in road • Traffic congestion or volume 	<i>Occasionally</i> selected: <ul style="list-style-type: none"> • Animals on road • Drivers not familiar with reservation conditions • Old or poorly maintained vehicles • Long travel distances • Traffic congestion

3.2 INTER-JURISDICTIONAL COORDINATION ISSUES

State governments participated in a national survey regarding tribal transportation that was issued at the same time. Altogether, there were 45 respondents from 22 states, almost exclusively from state transportation agencies (not, for example, from health or law enforcement agencies). The focus of the surveys of states was communication with tribes, state-tribal crash data sharing, and coordination of assistance available to tribes for data analysis and safety improvements.

To be clear, the states were not asked the question which tribes answered regarding the highest priority roadway safety concerns in reservations. Thus, the useful insights to be gleaned from the data from the state government respondents relate to processes and quality of relationships between state and tribal governments generally, as well as into issues of data quality and data sharing in particular.

3.2.1 State reports of their processes and relationships for working with tribes

Approximately half of the state respondents (49%) have a standard method or process for state agency/tribal interactions. The most common structure described by states was having a designated tribal liaison between the state transportation agency and tribes. When asked, “Please rate the government-to-government relationship and communication between your state agency and the majority of tribes in your state,” the mean response was a 3.3 on a scale of 1 to 5, with 5 being most positive. Analysis of the responses to open-ended questions in the survey reveals that the attention to tribal land concerns seems to be passive. Several respondents provided responses similar to the following comments:

Yes, we provide data [or guidance, or cooperate on a project] when asked, just like with any other jurisdiction.

The tribes can always ask [for data, guidance, or partnership] and we will respond.

Generally, the states do not make a point of using the data to assess or inform needs and policy development for tribal areas. Most do not routinely share data back with tribes, although most respondents indicated that this could be requested. Only 40% of respondents indicated that their state does any specific crash data analysis to evaluate tribal areas. In part, this may be because the data are too sparse to be very illuminating; as one state respondent explained:

So few reports are submitted it’s hard to do any analysis. If more were submitted we would be happy to do this.

3.2.2 Poor recognition of tribes’ special status

Frequently, the responding state government representatives did not seem to recognize the special status of tribes. There are lots of survey responses that refer to working with tribes “like any other local

unit of government.” Here are two such statements, from state engineering departments in two different states:

We accept and have funded HSIP improvements for local jurisdictions within the state. Tribal entities would/have received the same support.

We consider the tribal government just like a county or city government and will help them with the HSIP process and solutions.

These statements should not necessarily be interpreted as having ill intent, since both statements are about providing resources to tribes to support them. However, given the sovereign status of tribes, it is inappropriate to equate tribes with local governments, especially given the nested hierarchy of authority – with state government being more senior – implied by the local-state relationship comparison.

Other state respondents were well aware of tribal sovereignty. Several brought it up while responding to an open-ended question about “barriers that prevent tribal law enforcement from sharing their crash data with the state.” Some do not want to share data to “*protect data sensitive to the tribes,*” and state that they manage data confidentially and sharing carefully “*due to tribal sovereignty concerns.*” Several

stated that they do not want to have the state be in the position to make decisions about actions to take (issuing tickets, revoking license) on licenses issued by tribal governments because of sovereignty concerns.

Regardless of whether state governments seem ignorant of sovereignty, handle it with sensitivity, or experience it as a barrier to pursuing what they believe to be shared goals with the tribes, additional capacity of states to work with tribes productively would be welcome. The Minnesota Department of Transportation has spent years developing an award-winning short course on tribal-state relationships which serves as a positive model for other states to explore (Table 3.2).

Table 3.2 MnDOT Tribal-State Relations Training: A model for building positive relationships

The Minnesota Department of Transportation offers **Government-to-Government Tribal-State Relations Training**. This short course orients participants to tribal sovereignty and the requirements and proper procedures for consultation and decision-making. This award-winning program is designed and led by American Indian MnDOT staff and faculty from the masters of tribal administration and governance program at the University of Minnesota-Duluth. The training is hosted by tribal governments around the state, providing opportunities for state agencies to support tribal enterprises and for the tribes to educate others about their history and values. The training is offered to key employees in all state departments, not just transportation, and is in such high demand that spaces are at a premium. This is a model that other states should consider. For more information: <http://www.dot.state.mn.us/tribaltraining/index.html>

3.2.3 Tribe-state data sharing and quality

From the state's side, despite the anxieties just stated regarding respecting boundaries on data confidentiality, respondents expressed desires to build capacity for better data collection, data management, and data sharing. One respondent used the optional space for extra comments at the end of the survey to emphasize arguments for better information exchange:

This is a very big need for our tribal agencies and our collaboration and information sharing. I have worked to gain this information for over 14 years with little success. This survey gives me hope that changes could occur to improve our crash data collection and analysis with our tribal partners. They want to do this but have been limited by the BIA. Regular communication with our Tribal Agencies is key to continuing our improvements with in the tribal nations areas.

States' assessment was that the sharing of crash data is generally poor, although at least half of the state respondents asserted that they have communicated with tribes about the benefits of mutually sharing crash data. Some explained the failure to connect with arguments that tribes are “*not interested in sharing crash data,*” or “*do not collect crash data that is usable,*” or have data that is “*not fully accurate.*”

Others attributed data sharing issues not to a lack of will, but rather to limited capacity. Some stated that many of the same tribes who don't have usable data are in favor of collecting and sharing it but are “*hampered with no equipment and limited staff.*” Another elaborated:

Based upon comment shared from tribal officials, it was noted that the one major barrier to improving tribal crash data sharing is the lack of funding to enable tribal law enforcement agencies to increase their staffing and hardware/equipment capacity to carry out use of the software and data sharing/analysis processes.

3.3 SUMMARY OF KEY INSIGHTS FROM THE NATIONAL SURVEY OF TRIBES AND STATES

Generally, there is a high convergence between responses from the tribes, the states, and previously published literature on key sources of roadway safety risks on reservations, accompanied by a few surprises. Analysis of these data yields five key findings:

1. Confirmation of the priority of **road quality engineering and repair**. This is an extremely high concern among tribes nationwide, which indicates the continuing importance of federal and state programs to fund roadway infrastructure improvements and repair in American Indian reservations.
2. Confirmation of the priority of **driver behavior and education**. Reckless driving (speeding, impaired driving, and distracted driving) was the single most frequently raised concern among tribal government respondents, followed closely by seatbelt and child car seat use (3rd most frequent). This indicates that continuing investment in injury prevention programs, roadway

safety enforcement, and public health campaigns – including the Safety Circuit Rider program – remain critically important.

3. Rising concerns regarding vulnerable road users, ***especially pedestrians***. “Inadequate pedestrian facilities” was the fourth most frequently identified concern among tribal government respondents. While there has been relatively little previously published research to indicate that this is a high priority in reservations, the consistency of these results and the overwhelming prominence of this issue in the case studies with four Minnesota tribes (Chapter 4) indicate this is a high priority deserving additional attention.
4. Rising concerns about ***gaps in tribe-state inter-jurisdictional relationships***. States’ responses to the survey imply high potential for strengthening these relationships. Notably, states have a desire to improve connections for data sharing to support analysis and problem-solving around shared goals. However, the data also imply a need for: 1) more education of state employees to understand and recognize of tribes’ special status; and 2) more resources for tribes to have the capacity to document, share, and analyze data.
5. New questions regarding ***emergency medical services (EMS)***. Among the 150 tribal government responders, 18% identified “slow emergency response time” as one of their top three concerns. The California Tribal Road Safety Data Project has gathered similar data (Ragland, 2016), but relatively little work has been done on this topic, which therefore seems to merit additional study.

CHAPTER 4: MINNESOTA RESERVATION CASE STUDIES



Figure 4.1 Four collaborating tribal governments

Four tribal governments –Red Lake Band of Chippewa, Fond du Lac Band of Lake Superior Chippewa, Mille Lacs Band of Ojibwe, and Leech Lake Band of Ojibwe – responded to an invitation the researchers made to tribes in Minnesota to be part of the project (Figure 4.1). These reservations have a few features in common that support comparison: 1) all are communities of Ojibwe people, sometimes also identified as Chippewa, or more rarely as Anishinaabe, people (D. Treuer, 2012); 2) among the 11 reservations in Minnesota, these four are among the largest; and 3) all are located in the northern part of the state (Figure 4.2). The other tribal governments did not respond to several invitations to participate, declined to participate because of staffing or leadership transitions, or are too small to conduct a meaningful study of the reservation context.

We preface these four case studies with two reminders regarding the researchers’ partnerships with the respective tribal governments and what they mean for the presentation of the findings.

First, our agreements with all four tribes were that we would not share detailed data on their communities, with the exception of cases where they expressly encouraged and gave permission for this. Thus, these case studies do not include detailed maps of areas of concern, nor do they include images of people or sites that are identifiable unless they were previously published in news media or the tribe’s own communications.

Second, the case studies are uneven in terms of the depth of data collection, which reflects our respect for the opportunity to work with the four tribal governments and their guidance about how they wished the research to be done. On two reservations, we were encouraged to be present on the reservations, were asked to undertake extensive data collection, and were actively assisted with introductions and invitations to participate in community events. In partnership with these governments, we gathered and provided more data to the tribal governments than we had initially expected. In the other two reservations, the tribal governments were less active, possibly because they were less interested in the research or possibly because of staffing constraints. After we made several attempts to coordinate additional data collection, we received and respected that their interest or resources for partnering were limited.

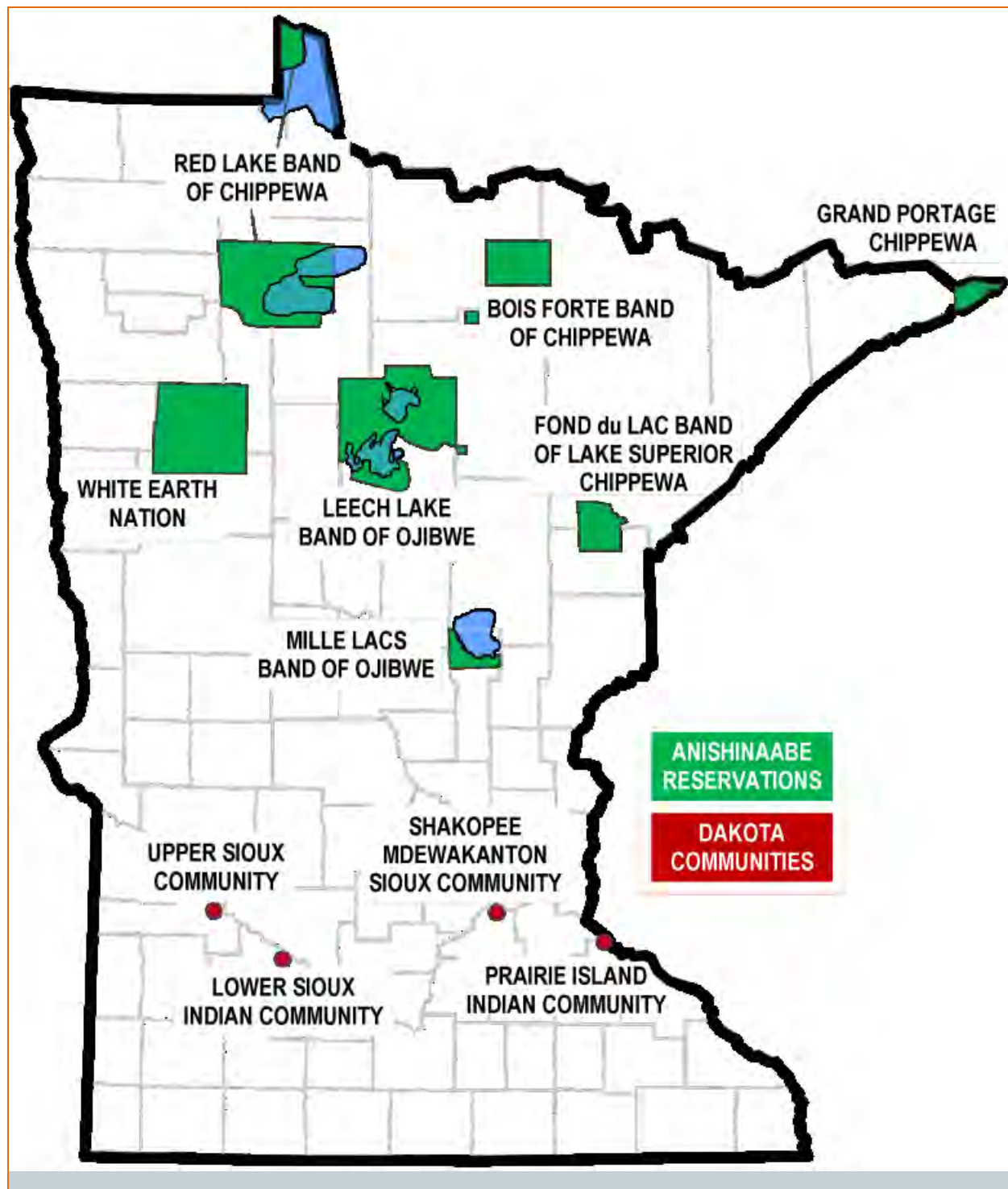


Figure 4.2 Location of reservations in Minnesota

Source: Indian Affairs Council of State of Minnesota. "Anishinaabe" means Ojibwe people (Ojibwe People's Dictionary, 2018).

As of 2016, there were an estimated 5,934 residents on the Red Lake reservation, 94.4% of whom identify as American Indian alone (American Community Survey 5-Year Estimates, 2012-2016). Most residents live in or near four small towns: Little Rock, Redby, Red Lake, and Ponemah. ***The focus of this study is the area surrounding the lake*** – a large body of water (188 square miles in area) comprised of Upper and Lower Red Lake – because it is the part of the reservation where almost all of the residents and centers of Red Lake community activity are located (shown in Figure 4.4).



Figure 4.4 Main area of Red Lake reservation

Source: Minnesota state highway map. This map serves only for general orientation purposes. The exact boundaries are contested and there is no publicly available map from the tribe.

The tribe is responsible for maintaining an enormous quantity of roadway, namely 1,600 miles of paved and unpaved roads (Red Lake Tribal Engineering Division, 2018), including many minimum maintenance roadways. In addition, two Minnesota state roads – Minnesota State Highway 1 (MN-1) and Minnesota State Highway 89 (MN-89) – cross through the most populous areas of the reservation. Segments of several county roads are also inside the reservation.

4.1.2 Data sources

On 37 occasions between October 2013 and July 2018, a member of the research team spent three to ten consecutive hours on the Red Lake reservation conducting fieldwork, building relationships with roadway safety leaders, getting to know the roads and landscape, attending community events, and occasionally being shown around the reservation by tribal government staff with responsibilities for some aspect of roadway safety. Altogether, 13 individuals from the tribal government and 5 from related public agencies were interviewed, many of them multiple times. In addition, the team accepted an invitation to participate in a big annual health fair organized by the tribal government, which gave us unusually good access to a large number of people from throughout the reservation and to table at a back-to-school night at the elementary school; between those two events, 88 reservation residents participated in brief surveys. Finally, in cooperation with graduate student Laura Dorn, Co-PI Narvaez observed school drop-off or pick-up conditions at four schools on the reservation as part of a complementary assessment of traffic safety at the schools.

4.1.3 Key safety concerns and opportunities

The major areas of concern for roadway transportation safety on the Red Lake reservation are as described below. The reservation area is so large that fine-grained detail would be overwhelming. Therefore, we are focusing just on the highest priority, most consistent areas of concern in this short case-study. The following key themes emerged:

The two state highways in the reservation – MN-1 and MN-89 – are the highest priority roadway safety risks named by all study participants. In July 2015, the researchers attended a community resource fair attended by people from all over Red Lake reservation. At the fair, we conducted brief interviews with 89 residents of the reservation. When asked if they had any concerns about safety on the roads, virtually every individual named one or both of these highways. These were short interactions of 2-5 minutes with each individual, and it is therefore highly telling that so many people pointed directly to these roads as areas of high concern.

Their concern is that these highways have a high volume of high-speed traffic and that reservation residents must constantly navigate them without traffic signals or sidewalks. The highways cut right through the middle of centers of activity on the reservation. Not only are they the major routes in and out of the reservation, but MN-89 is also an internationally important truck route for moving goods between the United States and Canada. Thus, a high volume of vehicles – including 18 wheelers – routinely pass right through the major areas of reservation activity, often at very high speeds.



Figure 4.5 Improvements to stop sign and street lighting at MN-1 and MN-89 intersection, Red Lake

Source: Guillermo Narváez.

Yet, there are no traffic signals to slow movement on MN-1, even at the T-intersection of MN-1 and MN-89. Fortunately, in mid-2018 this intersection was improved by the addition of a street lamp and by replacing the old sign with a larger stop sign outfitted with a high-visibility flashing light to draw drivers' attention to it (Figure 4.5).

The Red Lake Tribal Council has stated that it is a priority to make similar improvements – a flashing stop sign and street light – at the T-intersection of MN-1 and Reservation Highway 18. This intersection is the only entry and exit point into Ponemah, the community located on the peninsula between Lower Red Lake and Upper Red Lake (Figure 4.4).

Residents constantly travel on and cross MN-1 or MN-89 to access all of the major residential areas, schools, centers of employment, hospital, grocery stores, recreation facilities, and tribal government offices. Figure 4.6 illustrates the clustering of services around MN-1 in Red Lake, the busiest area. But in the village of Redby as well, residents must frequently travel on and cross MN-1 to get between residences, the basketball court and playground, and key centers of economic activity (the Red Lake Nation Foods processing and sales center and Red Lake Nation Fishery, where residents sell, are employed to process, or purchase foods harvested on the reservation), and the Redby Community Center.



Figure 4.6 Multiple centers of activity around MN-1 in the town of Red Lake

Source: Kade Ferris, Red Lake Tribal Engineering Division.

Pedestrian safety, especially adjacent to and crossing MN-1 is of particular concern. Reservation residents regularly navigate the shoulders of these highways and cross them on foot, ATV, or bicycle. Notably, Red Lake Foods is the best place on the reservation to purchase everyday groceries and supplies, the nearest full grocery being 32 miles away, off the reservation in Bemidji. This store is located just feet from Highway 1, and people walk to and from it, including across the busy highway, all day long. Red Lake Foods also sells gasoline, so cars constantly enter and exit the parking area (Figure 4.7). An aerial photograph of the area, taken in 2018, documents the amount of foot traffic coming in and out of the area (Figure 4.8).



Figure 4.7 Pedestrian walking on berm of Minnesota Highway 1 across from Red Lake Foods
 Source: Google maps 2012.



Figure 4.8 Footpaths worn by heavy pedestrian movement around Red Lake Foods
 Source: Google maps satellite image, 2018.

The bridge crossing over Ogaakaaning-ziibing (Pike Creek) on MN-1 is a particular concern for pedestrian safety (Figure 4.9). The shoulder of MN-1 is how pedestrians get across the creek when moving between Red Lake Foods, Head Start, or the hospital and health clinic (to the west of the creek) and the tribal government center, tribal college, gymnasium, and post office (all located to the east). There is a narrow shoulder here and a well-worn footpath through the grass immediately next to the highway.



Figure 4.9 Narrow footpath in pinch point of MN-1 crossing Pike Creek

Source: Google maps 2012.

Not surprisingly, then, residents surveyed at the community fair constantly mentioned their concern about pedestrian safety while walking adjacent to or crossing MN-1. Similarly, transportation and public safety leaders in the community consistently name this as a very high concern. The following is an excerpt from one of multiple interviews in which tribal government staff involved in all aspects of the “4Es” of roadway safety repeatedly mentioned pedestrian safety on MN-1:

It is a super high priority to improve the area between Red Lake and Redby [on MN-1], where you have so many people walking and it is not safe.

Similarly, residents and tribal government staff are concerned about pedestrians crossing MN-1 in Redby, particularly to get back and forth to the playground and ballcourt adjacent to the highway

Limits of inter-jurisdictional coordination. Despite Red Lake’s strength as a sovereign nation, there are features of roadway safety in which cooperation with other governments – federal, state, and county – are essential.

1. *Tribe-state coordination.* Tribal government staff are extremely eager for the state of Minnesota – which owns and has responsibility and control over MN-1 – to invest in a trail or other pedestrian/bike safety improvements along the road. While Highway 1 and 89 are the sites of the highest priority roadway safety risks named by all study participants, the tribe has neither responsibility nor control over their engineering, maintenance, and policing because they are state highways. Often there is positive cooperation between Red Lake and MnDOT on infrastructure improvements to the road itself. For example, because road width standards have increased over the years, road improvement projects often require road widening. Red Lake’s tribal government takes the lead on right of way issues for road widening and typically performs or contracts out the construction work, and the state then pays for the acquisitions and road work. However, the tribal government is eager to see the state also invest in pedestrian improvements along these highways.
2. *County coordination.* Altogether, nine Minnesota counties overlap with some part of the reservation. Segments of several county roads are inside the reservation. They are counted by the federal government as part of roadways for which the tribe is responsible, so that tribe receives some funds and takes responsibility to maintain them.
3. *Limited federal funding for maintenance.* However, this arrangement is also problematic; federal allocations for tribal roads and funding formulas have meant that this fund has not risen even as communities have grown. Altogether, the tribal government is responsible for 1,600 miles of roads in the reservation. Reservation residents are not necessarily familiar with the funding formulas that limit federal funds for reservation roads, but in the statements that they made during brief surveys at the community fair, they did point to differences in road maintenance between the roads maintained by the tribe and roads off the reservation or state roads within the reservation. Several community leaders expressed frustration about the important everyday implications of poor road maintenance. For example, a parent of a Red Lake school district student reported:

Not long ago, a whole bus load of students got delayed. The road maintenance is so bad that their school bus got stuck in a pothole. They had to wait for another bus to come get them.

4. *Law enforcement coordination.* On the law enforcement side, the Minnesota State Patrol and the county sheriff’s departments do not get involved in roadway safety within the reservation. Red Lake is a closed reservation with a proud, hard-won history of sovereignty. The tribal government has its own police department, and other police departments may not enter the reservation and do not have authority to act there (with a few narrowly bounded exceptions, relating to non-members committing crimes against non-members). Study participants from the reservation stated that this arrangement increases trust between reservation residents and law enforcement, which is important for the mutual safety of community members and residents. However, there are hints in some of the interview and survey data collected that Red Lake residents and possibly some

government employees would welcome more Minnesota State Patrol presence to regulate reckless driving on MN-1 and MN-89. A senior law enforcement officer from a county overlapping Red Lake reservation spoke highly of Red Lake Police Department's willingness to cooperate on areas of shared concern and observed, *"Now, we're working together on problems more than we ever have before."*

Severe winter conditions are dangerous.

On average, the low temperature for the winter season in the main area of the reservation is -36F/-38C (Minnesota Indian Affairs Council, 2017). Winter conditions often make roads slippery, especially in wooded areas of rural roads with low traffic volumes, making driving conditions hazardous. Children getting to school and other pedestrians are at risk of exposure to extreme cold unless they have very warm clothing and places to shelter. In addition, snowplow operators, school bus drivers, and residents stated during interviews that ice surges – drifts of snow and ice blowing off Lower Red Lake – sometimes block the only road in and out of the community of Ponemah, home to over 700 people. The tribe's maintenance and police departments prioritize responding to these issues so that people are able to get to and from school, work, and services, and so that emergency responders can access the area (Figure 4.10). Nonetheless, sometimes the road remains partially obstructed by large drifts for days at a time, causing visibility and other navigation hazards.



Figure 4.10 Ice surge blocking Ponemah's only access road

Source: Red Lake PD, 4/30/18.

Safe routes to school. Red Lake has been paying special attention to safe routes to school for children. In 2017, MnDOT allocated \$70,000 for a lighted pedestrian trail and walkway for students attending the largest elementary school. Still, the tribal government and school leadership remain concerned about safety right around schools during student drop-off and pick-up. The school district welcomed the researchers into an elementary school during a back-to-school event to talk with parents about safety concerns, where a number of parents explained that they prefer to drive or carpool to get their children to school because of concerns about winter weather, stray dogs, or about younger children being mixed in with much older children without adult supervision on the school bus. These issues are not addressed by typical pedestrian and bicycle improvements, so working to improve safety of pedestrians at pick-up and drop-off sites is an important part of the overall safety solution.

Therefore, as an extension of this research project, Red Lake invited the researchers and a graduate student to collaborate on master's project to study how to improve circulation on the campuses of the

early childhood development center, three elementary schools, and the middle/high school complex to improve circulation and safety.

On the basis of observations and interviews with key stakeholders, the study recommended several improvements, including raised pedestrian crosswalks, one off-site drop-off location, changes in the flow and configuration of drop-off areas in two of the school campus, and design improvements in adjacent roadways (e.g., turn and bypass lanes) (Dorn, 2017). The Red Lake government is now seeking resources for implementation, including funds for a pedestrian path connecting the Red Lake Elementary School and Red Lake Foods area.

4.2 FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

4.2.1 The reservation context

The Fond du Lac reservation, created through the La Point Treaty of 1854, is located in northeast Minnesota, about twenty miles southwest of Duluth (Figure 4.2). It is the reservation of the Fond du Lac

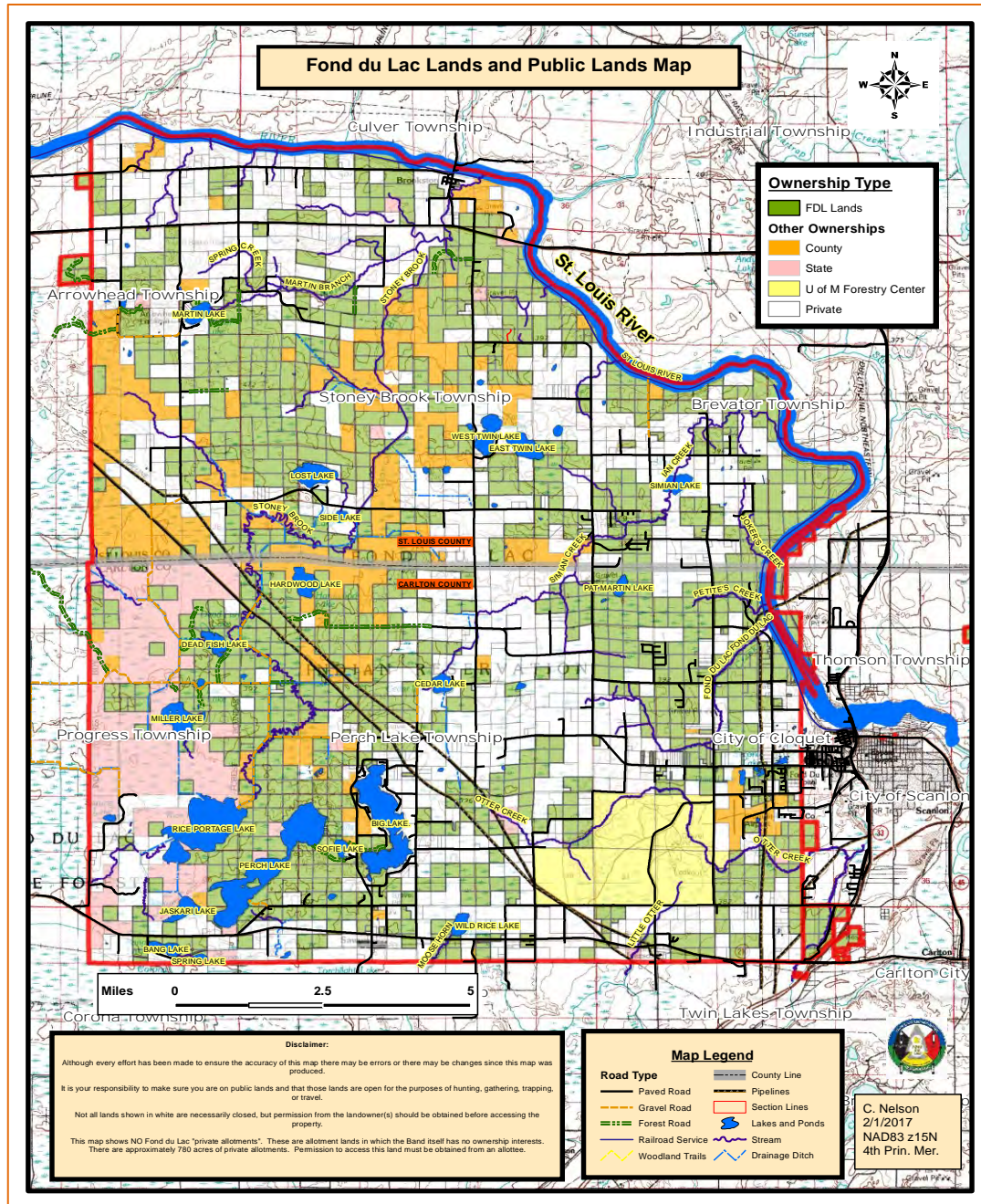


Figure 4.11 Land ownership and overlapping jurisdictions in the Fond du Lac reservation

Source: Fond du Lac Band of Lake Superior Chippewa GIS division. Land ownership as of 2/1/17.

Band of Lake Superior Chippewa, which has over 4,200 enrolled members, of whom about 1,500 live on the Fond du Lac reservation. In addition, 2,800 people who are *not* members of the tribe live on the reservation, reflecting a long history of land being lost to settlers and “checker-boarded” into fragmented tribal ownership through this process (as explained in Chapter 1.3). Of the approximately 100,000 acres of the reservation, approximately 43% are currently in tribal ownership (Figure 4.11). The reservation overlaps with several other jurisdictions, including Carlton and St. Louis counties, the City of Cloquet, and six townships.

The 402 miles of roads on the reservation are owned and managed by a blend of these jurisdictions as well as federal and state government. Only a small portion of the roads – approximately 17 miles in total – are Bureau of Indian Affairs roads that are owned and managed by the Tribe. In addition, there are 13 miles of state highway (MN-210 and state-managed forest roads), about 10 miles of federal or BIA roads (Interstate 35 and US-2), 104 miles of county-owned roads, 54 miles of township roads, and 32 miles of city roads (Fond du Lac Band of Lake Superior Chippewa, 2016).

4.2.2 Data sources

On 30 occasions between October 2013 and June 2017, a member of the research team spent three to ten consecutive hours on the Fond du Lac reservation conducting fieldwork, getting to know the roads, generally familiarizing ourselves with the context, and doing of interviews. Data collection involved interviews with 19 tribal government managers with direct responsibility for transportation safety (e.g., planners, law enforcement, injury prevention educators, public works managers), 6 expert drivers with extensive knowledge of the roadways (school bus, public transit, and propane delivery drivers), managers and employees of major centers of activity (schools, community centers, or the casino). In addition, we conducted brief surveys with 31 other members of the Fond du Lac community at two community events (Fond du Lac enrollee days on June 26-27, 2015 and the Police Department Barbeque on July 25, 2015). Thus, most of the data comes from tribal government managers who have direct and primary responsibility for the roadway safety on the reservation, from residents, and from non-resident enrollees (mostly through face-to-face meetings on the reservation). We supplemented that data by gathering perspectives from 11 individuals who have transportation safety responsibility – through engineering, enforcement, or first response teams – from adjacent and interrelated jurisdictions (mostly via phone interviews). Altogether we interviewed or surveyed 66 individuals for this case study.

4.2.3 Key safety concerns and opportunities

The major geographic areas of concern for roadway transportation safety on the Fond du Lac reservation are as follows:

Pedestrian safety. Pedestrian safety in general was by far the top concern we heard from residents at community fairs about any aspect of roadway safety on the reservation. We have heard many accounts of injuries and fatalities that people attributed in part to the lack of paths or adequate shoulders to protect pedestrians from traffic, compounded sometimes by poor visibility (mostly from hilly conditions,

occasionally also from poor lighting) or icy conditions. Other people told us that they avoid sending their children out to walk or bicycle because there is no safe shoulder or sidewalk for them to do that. Leaders in the tribal government also name pedestrian safety as a very high priority, not only because they are concerned about safety, but also because the tribal government is actively encouraging walking for health and recreation. Managers of many tribal government departments and expert drivers (from transit, school bus, and propane delivery units) all name this as a very high area of concern and a distinctive need of the reservation.

Several hotspots of concern for pedestrian safety were consistently found in the data, as follows:

1. *Big Lake Road*, where there is heavy vehicle and foot traffic but no trails, particularly between University and Whispering Pine and between the Convenience Store and Highway 33.
2. *Mahnomen community*, both in the community and on approaches to it along Belich/Mahnomen Roads and the smaller surrounding roads. Residents report speeding (and speed bumps being removed) and erratic driving in areas where kids play and many people walk. Some also stated that people are walking at all hours and that there needs to be better lighting to illuminate the Brookston Road and Mahnomen Road intersection at night. They also reported snow/ice conditions especially on Belich Road, where they remain worried about slippery winter conditions on uneven sections with poor visibility following a pedestrian fatality. Several residents stated that, when they call to report icy conditions (they did not specify to whom), they experience confusion or avoidance among the city and two counties over who is responsible. This seems to be a safety issue of especially elevated concern and sensitivity because of a tragedy the community already experienced, when a child walking along the road was killed.
3. *Sawyer community*, especially where kids bicycle and walk around the Sawyer Community Center, especially on Mission Road. We have not talked with many people from this community, but the few we talked with consistently named this.
4. *Tribal government center*. We heard concerns from expert drivers and from the tribal government's school, recreation, transit, and planning professionals about kids navigating inner roads and dealing with parking lot traffic when walking between the Fond du Lac Ojibwe High School and Head Start center, Fond du Lac Community Center, and the pow wow grounds.

When it comes to pedestrian safety, however, it depends on whom you ask. The data from tribal government leaders – across departments, including law enforcement, planning, public works, education, and public health – was extremely consistent about pedestrian safety being a very high priority. Similarly, virtually every resident or frequent reservation visitor who participated in the brief surveys also mentioned pedestrian safety. In fact, for many this was the distinguishing feature of roads and roadway safety on the reservation, as expressed by this person:

Well, as soon as I get on the rez I know I need to start looking out for pedestrians. That's really the only difference between off and on the rez when it comes to being safe on the roads. [Fond du Lac enrollee who lives off the reservation]

In contrast, coordinating jurisdictions did **not** seem to see this concern so acutely. When we interviewed key leaders from other jurisdictions with some overlapping engineering, maintenance, or enforcement responsibility for roadways on the reservation, they rarely mentioned pedestrians at all. We began with an open-ended question, asking them to describe safety on the roads on the reservation and to name their key concerns. After listening to their responses, if we did not hear them mention pedestrians, we would share with them that tribal government leaders and reservation residents had repeatedly stated they were especially concerned about pedestrians. At that point, the coordinating jurisdictions sometimes mentioned plans to extend the pedestrian trails along Big Lake Road and stated their support for the project. However, they would typically not respond to this prompt by stating that they saw pedestrian safety as a particularly high need or something distinctive about the reservation community.

There are a few possible interpretations of this **apparent disconnect over prioritizing pedestrian safety**. One possible explanation is that state or county officials are simply not very in touch with residents' perceptions of conditions on the reservation. These two comments from representatives of other jurisdictions – both with responsibility for some geographic area or aspect of roadway safety on the reservation – suggest they have very little familiarity with local conditions, or a very different perspective on them:

I travel those roads off and on and you do see a lot of youngsters out and about there. I don't know if there's anything special about it because I am only up there about once or twice/year. [County commissioner]

[Interviewer: We've heard that pedestrian safety issue an issue. You didn't mention that. Is that your impression as well?] *That people are hitting pedestrians?* [Researcher: Or that there are more pedestrians in the road?] *Hm. I haven't heard that.* [Law enforcement officer, non-tribal government]

Another explanation may be that pedestrian safety does not stand out as a very elevated concern in the databases that most transportation safety experts would use. As Figure 4.12 (right side) shows, only three crashes involving pedestrians on the reservation are recorded for the entire 2006-2014 period in the MNCMAT (the Crash Mapping Analysis Tool of MNDOT and MNDPS Department of Driver and Vehicular Safety).

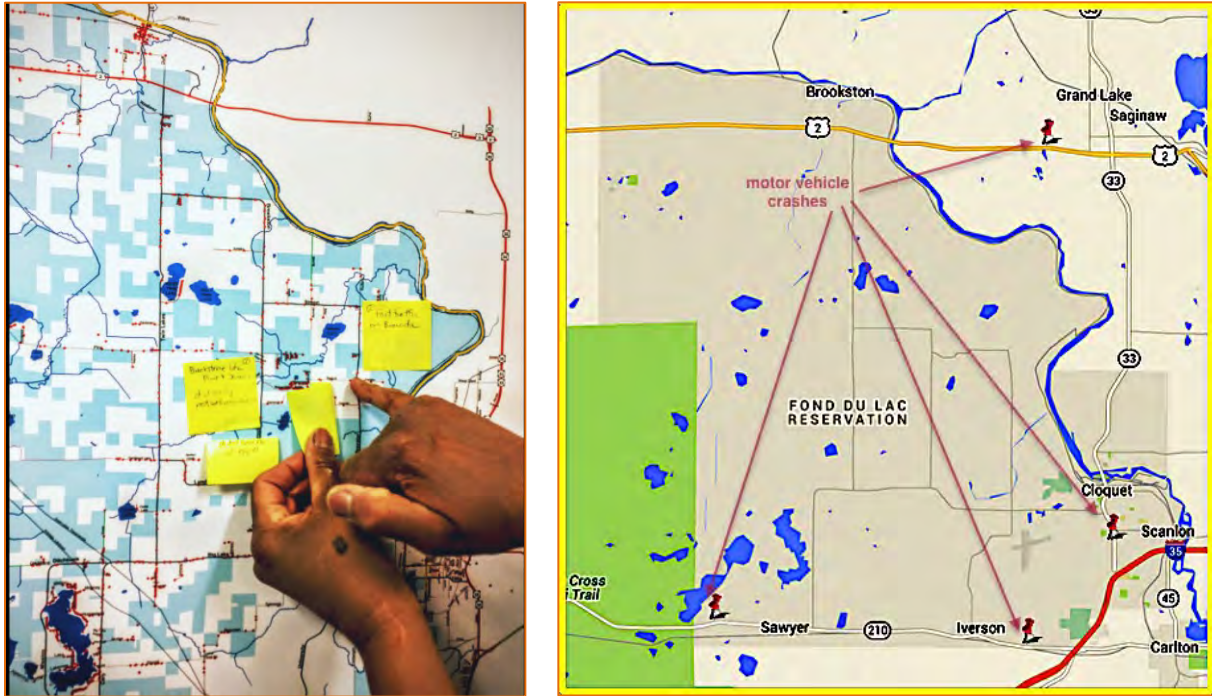


Figure 4.12 Divergent resident and crash record perspectives on the same problem: pedestrian safety

Left: Resident using map to point out areas of concern. Right: FARS data from 2011 showing a total of 3 crashes in the reservation area.

Physical road infrastructure and maintenance. Generally, the feedback on road conditions was extremely positive, with a few exceptions. We repeatedly heard key stakeholders inside and outside the tribal government, expert drivers, and residents say that there was really no difference in the roads on and off the reservation. The pattern we observed was that people with responsibility for road engineering and maintenance take great professional pride in equally applying universal standards of excellence for safety. Numerous people said some version of this:

If there wasn't a sign to tell me I was entering the reservation or street signs in Ojibwe, I don't know that anyone would notice. There isn't really any difference in how the roads are built or maintained.

[Asked if there was anything special about roadway safety on the reservation] *I don't think so.... As far as road maintenance and road condition, it's kind of the universal countywide, I guess, and citywide. [a county engineer]*

I may be blind, but there's no obvious difference in the roads as you enter the reservation. [EMS responder]

Everything looks the same.... All the roads look like relatively good shape and all the signs and traffic lights, everything else, seems to be just fine. [state patrol]

Positive feedback on infrastructure. We consistently heard very positive feedback about safety conditions and improvements in a few locations:

- Improvement to the intersection of Big Lake and Brevator Road;
- The walking and biking trails that exist or are under construction;
- I-35 and MN-210 interchange improvements in road geometry, signage, and Black Bear Casino signal;
- Bridge and road improvements on Reservation Road following St. Louis river floods (except uneven road surface on the northbound approach to the bridge that can send cars towards the ditch when it's icy);
- Improvements to Cartwright Road, especially the high-visibility stop sign where it ends at Moorhead; and
- Improvements to University Road.

Areas of concern regarding infrastructure. The most persistent concerns and complaints we heard were:

- First and foremost, the pedestrian safety concerns described above;
- Cartwright Road improvements: straight, smooth surface, more direct route, and less shelter make residents and key stakeholders concerned about increased speeding, traffic volume, and maybe snowdrift;
- Highways 210 and 2, especially as they are undivided with high speed and traffic volumes. Numerous older residents told us they are afraid to drive on these roads;
- The Highway 33 & I-35 interchange. While this is not on the reservation proper, it's worth mentioning that residents and key stakeholders frequently mentioned that they are frightened to drive in this area, even after recent engineering changes to improve safety;
- Winding roads near Big Lake, hills, poor visibility, and icy conditions. Most residents and expert drivers felt this was an inevitable consequence of the natural features of this area and had no complaints about maintenance or road engineer. They simply reported that they have to take extra care in this area, especially at night and in winter driving conditions;
- Brookston Road near the county line: potholes, unpaved area, corduroy conditions, ice and snow maintenance. Residents and expert drivers stated that they fear heading into the ditch when there are slippery winter conditions on top of this ice;
- Reservation Road on the northbound approach to the bridge. There is some unevenness where residents state they must take extra care when it is icy so that they do not go off the road or across the center line; and
- Connors' Corner is one of the places where cars go off the road in winter driving conditions.

Driver behavior. Law enforcement, emergency responders, and injury prevention specialists are acutely concerned about texting while driving. Otherwise, in our preliminary analysis, we do not find any strong and unambiguous messages regarding driver behavior and safety. The data is mixed with regards to how much speeding, driving while impaired, unlicensed driving, or the use of safety restraints are safety risks on the reservation. Nothing stands out as a difference in conditions on versus off the reservation.

When we asked whether there is anything distinctive about driving behaviors and violations on and off the reservation, law enforcement officers from the Fond du Lac Band and other jurisdictions stated that

there is not anything special or different about drivers on the reservation. We asked this question directly in every interview and there was a very consistent response that there is no difference, either in the statistics and reports or in their behavior.

Impaired driving. When we spoke with reservation residents and other enrollees at Fond du Lac community events, numerous residents told us they were concerned about impaired driving. Asked if she had concerns or suggestions about improving safety on the roads in Fond du Lac, one resident said only, “Yes. Could you see to it that all the drivers are properly licensed and sober?” Another observed, “It’s like people don’t think the law applies on the reservation, that they can drive like idiots on their ATVs where there are people all around, or just party and drive.”

However, we also noticed that some key stakeholders also seemed nervous about discussing impaired driving. Law enforcement professionals from outside jurisdictions were reluctant to speak for themselves about this at all, so we often had to ask about this in at least two different ways during interviews. They would make comments such as, “They would be the first to tell you there’s a problem with alcohol and drugs on the reservation,” and in one case one of the people we interviewed asked us to erase from our record a statement they had made about a case that seemed to involve drunk driving.

The research team wants to be very clear that we did not try to force this issue, but did attempt to follow up since there is a “conventional wisdom” explanation that the elevated rate of fatalities and severe injuries from motor vehicle crashes among American Indians is related to substance abuse. Indeed, law enforcement professionals seem to be aware there is a lot of prejudice in play that they should not unthinkingly replicate. This is how one officer put it:

I’ve heard people say American Indians are more likely to drive drunk. I have conflicting responses to that. I have spent a lot of time living in or working professionally with reservation and American Indian communities in a few different places. Yes, reservations are hurting. Yes, alcoholism is a problem. But I am not sure that is tremendously different from other populations that are hurting. I have not seen any stats to suggest that DUI and accident incidence is substantially higher on-reservation than off.

At the request of a few people in the tribal government, the researchers looked at whether there are any patterns emerging relating to speeding or impaired driving among patients or drivers traveling between the reservation and methadone clinics where people seek treatment for opiate addiction. When we asked law enforcement and emergency response specialists whether this is an emerging area of concern, they said they knew about the highway construction worker who was killed by someone impaired by methadone and could imagine this could be an issue. But, they have not seen reports to suggest it is commonplace or particularly more consequential than any other form of impairment or distraction.

Use of safety restraints. Several injury prevention professionals suggested that there is a lower rate of using seatbelts and car seats at all or properly on the reservation, but that there has been steady improvement in this. It is our impression, from discussions with several people who do car seat distribution and education in reservations around the state, that Fond du Lac is doing particularly well with documentation, education, and enforcement. The tribe’s injury prevention lead staff have been

recognized with awards from the Minnesota Toward Zero Deaths program. The Fond du Lac police department and tribal court have recently increased enforcement and penalties for not using seatbelts.

Inter-jurisdictional coordination. Generally, there was very positive feedback about coordination among the Band's planning and public works and law enforcement departments and the corresponding agencies in other jurisdictions, particularly in three areas: (1) policing; (2) public works; and (3) emergency response.

1. *Policing.* Some of the most positive feedback gathered in interviews and surveys was about the Fond du Lac Band having its own police department. The researchers heard this especially from residents and tribal government leaders, but also from other jurisdictions. The positive comments included compliments to the Fond du Lac police department for providing high levels of service, providing culturally appropriate outreach that is trusted by band members, and for affirming tribal sovereignty. Other law enforcement entities appreciated that the Fond du Lac department increases police coverage in the area, is friendly to work with, and indicated that they often check in with each other regarding PL 280 and other tribal law and sovereignty issues.
2. *Public works.* Staff of public works or transportation departments of overlapping jurisdictions mentioned that they found the Fond du Lac Band very easy and positive to work with and explained that there were projects that were prioritized because of cooperation, advocacy, funding, or other resource sharing with the band. They regarded these projects and their cooperation very positively.
3. *Emergency response.* Study participants rarely raised concerns regarding responses to accidents, the quality of emergency treatment, or coordination among jurisdictions on emergency response. It appears that this is not a problematic area, and inter-jurisdictional coordination through the Cloquet Area Fire District is working fine.

4.3 MILLE LACS BAND OF OJIBWE

4.3.1 The reservation context

The Mille Lacs Band of Ojibwe reservation is located in central Minnesota (Figure 4.2). The reservation areas are non-contiguous and comprised primarily of three districts centered around the communities of Vineland (near Onamia), McGregor, Isle, and Hinckley, Minnesota. As established in the Treaty of 1855, the land area of the reservation is approximately 61,000 acres. This study utilizes the reservation boundaries and trust lands as defined by the tribe and mapped in the Minnesota Chippewa Tribe's maps of trust lands and resources (Figure 4.13).

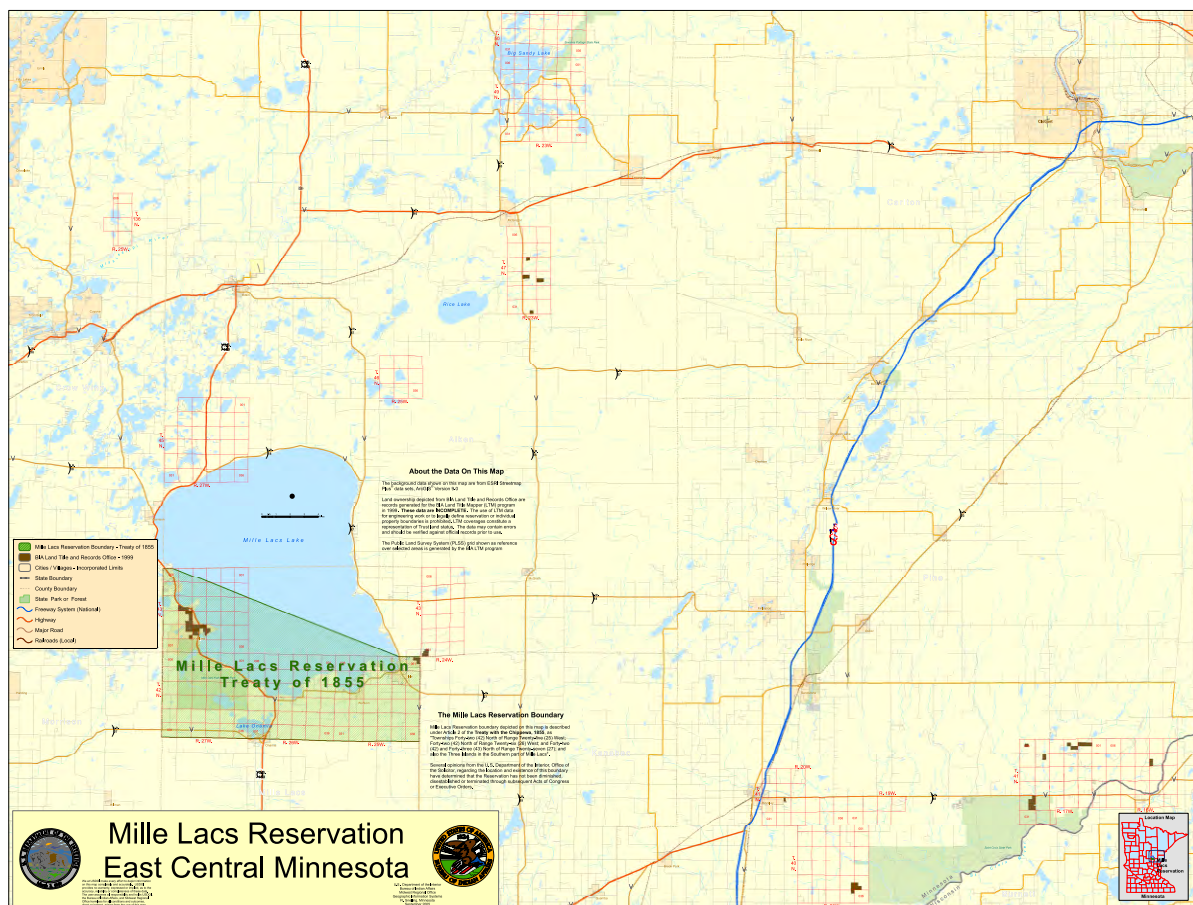


Figure 4.13 Boundaries and areas of the Mille Lacs reservation

Source: Bureau of Indian Affairs.

However, to make sense of the discussion of inter-jurisdictional arrangements, it should be noted that some other jurisdictions do not accept this full area, or the rights the tribe reserved to hunt, fish, and gather on millions of acres of ceded land. In 2004 Mille Lacs County lost a case disputing the reservation boundaries in the US Eighth Circuit Court of Appeals (Mille Lacs Band of Ojibwe, 2018), and the tribe's

exercise of its natural resource rights – especially relating to fishing and fisheries management in Lake Mille Lacs – remain hotly contested to this day (Kennedy, 2018).

The Mille Lacs Band has over 4,300 members as of 2018 (Benjamin, 2018). Approximately 2,000 – almost half – of Mille Lacs Band members live on the reservation, along with many non-Band members. For example, in the section of the reservation with the highest concentration of Band members (District I, around Vineland), just under 30% of the 4,539 residents of the area identify as American Indian or Alaska Native from any tribe (American Community Survey 5-Year Estimates, 2012-2016). Notably, the tribe employs over 4,000 employees – including many non-Band members – across the Band’s many enterprises (hotels, casinos, golf courses, banks, grocery stores, etc.) and government services (Mille Lacs Band, 2018).

4.3.2 Data sources

On 12 occasions between October 2013 and November 2016, a member of the research team spent three to ten consecutive hours on the Mille Lacs reservation conducting fieldwork, building relationships, getting to know the roads, becoming familiar with the context, doing interviews with people with key knowledge of roadway safety issues on the reservation, or participating in community events. Additional interviews were conducted by phone. In total, we interviewed 14 people with specialized knowledge and responsibility for roadway safety on the reservation, including engineers, planners, and law enforcement, 5 additional persons with those leadership responsibilities from overlapping/adjacent jurisdictions (e.g., county public works or sheriffs’ departments), 89 members of the general public, and 6 others who work on reservation roadway safety at a statewide level, including in the Mille Lacs Band lands.

Data collection in this case was done primarily with Mille Lacs Band tribal government representatives and band members living on the reservation. Due to the acute conflict between the Band and Mille Lacs County during the period of this study over coordinating law enforcement in the region, as described further below, it was not a conducive time to conduct interviews with representatives of the overlapping county governments, although a few people were willing to speak with us for deep background. As a consequence of this controversy, however, there was relatively more press coverage and discussion in the media of safety issues in this reservation than in the other case study areas, which provided some relevant data. In addition, the Band’s health department invited us to participate in four community health fairs. These were well attended and held at the community center in each district of the reservation, so we achieved good coverage with our brief surveys of residents.

4.3.3 Key safety concerns and opportunities

Pedestrian safety is a very high priority area for improving safety in the roadways in this reservation.

Minutes 1:50 to 2:45 of “Finding Solutions to Save Lives” (<https://youtu.be/fa0hp8hHvHc>) show multiple pedestrians navigating the roadways in the Mille Lacs Band reservation. This footage was captured in a single 2-hour period and demonstrates that many people are moving about on foot – even on a cold,

windy winter day – to go about their everyday business of getting to school, work, or the grocery store, to visit friends and family, and to access community services (Figure 4.14).



Figure 4.14 Multiple pedestrians on freeway frontage road, Mille Lacs reservation

Source: Roadway Safety Institute (2016). <https://youtu.be/fa0hp8hHvHc>

Pedestrian safety was *the* prominent concern in our interviews with key stakeholders and in our brief surveys with residents. The tribes' leaders with primary responsibility for roadway safety issues – transportation engineers, law enforcement, and health leaders involved in injury prevention and rehabilitation – repeatedly emphasized this issue, as did the reservation residents with whom we spoke at community fairs. We heard many accounts of injuries and some fatalities that people attributed in part to the lack of separate paths or adequate shoulders to protect pedestrians from traffic, poor road crossing infrastructure on busy roads, or poor visibility due to lighting or vegetation. Many described their reaction to pedestrian risk in terms of an avoidance strategy, which means they prefer and may try to avoid walking or biking except where there are trails. However, even in the absence of pedestrian trails, road crossing infrastructure, or good lighting, there are still many people moving on foot in, on, or across roadways, by choice or necessity.

The study participants very consistently pointed to two locations that particularly concerned them. One is **State Highway 169** through the main reservation area (District I) on the west side of Mille Lacs Lake. This area is sometimes referred to as Nay Ah Shing – or “the Point” – and is located north of the town of Onamia. This busy, four-lane highway runs through the middle of the reservation, separating the grocery store and the casino (a major center of employment) from a large area of housing, the high school,

government center, community recreation center, health care clinic, and assisted living facility. High-speed traffic travels on this road around the clock. State Highway 169 is one of the primary connections between the Twin Cities metropolitan area and the central part of the state, which is a popular site for second homes and for summer vacationing, boating, hunting, and fishing.

In interviews and surveys, multiple transportation safety specialists for the tribal government and many residents stated their grave concerns about the high volume of traffic during peak seasons and weekends, especially because the drivers are non-locals who would not necessarily expect to see pedestrians walking along or attempting to cross such a busy highway. During fieldwork on the reservation, the researchers frequently observed pedestrians navigating across this very busy road (Figure 4.15).



Figure 4.15 Pedestrians crossing Minnesota Highway 169, Mille Lacs reservation

Photo by Guillermo Narváez.

A law enforcement officer summarized concerns about Highway 169 like this:

Highway 169 splits the reservation, so there are tons of people walking on the frontage road or crossing the highway. We've had 5-10 pedestrian accidents in the last decade on it, including some serious ones. The top three dangerous intersections are all on 169: at Bugg Hill (the access road to one of the major housing areas) because there's a steep grade and you can easily overshoot into the highway when it's icy; at Timber Trails and 169; and at the casino entrance intersection. Drivers run that light (and can

easily take out someone). We see people crossing there on foot every day, standing in the highway median [See Figure 4.15] waiting to cross to get to the market, casino, or the movie theatre.

State Highway 65 in the East Lake reservation area is the second area of special concern for pedestrian safety. In surveys with community members at a health fair in the East Lake Community Center, which serves the Minisinaakwaang (District II) area of the reservation, and subsequent interviews with tribal government leaders, there was strong concern for band members who walk up and down this road. There is high-speed traffic, a lack of sidewalks or lighting, and a rapid drop-off from the berm to a ditch on both sides. Therefore, the band's community development department is planning for a separate pedestrian trail, with lighting and signage, along a 2-mile section of Highway 65 in this area (Figure 4.16). Mille Lacs is currently seeking resources for this improvement.



**Figure 4.16 Proposed location of new pedestrian trail,
Minnesota Highway 65, Mille Lacs reservation**

Source: Google maps © 2014.

Divided, contentious relationship with county law enforcement. This research on roadway safety was being conducted at exactly the same time as some particularly acute stages of headline-attracting conflict over the suspension of a law enforcement agreement between the Mille Lacs County sheriff's department and the Band's police department (Benjamin, 2016)

Mille Lacs County and Band had been cooperating through a joint law enforcement agreement, but the County unilaterally severed the agreement in summer 2016 – despite the objections of the tribal government and reservation residents – stating concerns about the work of the tribal police department. The Mille Lacs Band rejects those concerns as baseless, and on the contrary, has repeatedly asserted that the break-down in law enforcement cooperation and coordination between the tribal police department and county sheriff has serious and negative consequences for the timeliness, consistency, and overall quality of public safety services, not only on the reservation but throughout the county, for native and non-native people alike. After 15 months with no resolution of the dispute, in late 2017 Minnesota Governor Mark Dayton urged the county and band to end what he described as a “public safety crisis” (Smith, 2017), but as of the writing of this report, no resolution has been reached.

Not long before Mille Lacs County cut off the policing agreement, the Department of Interior had sided in favor of the Band in the latest round of many years of efforts by Mille Lacs County to dispute the Band's ownership of land within the 1855 treaty reservation boundaries, to which the Band insists it

never ceded (Mille Lacs Band, 2018). Many have read the County's policing decision as retaliatory.⁴ There has been a long history of ups and downs in the relationships among the Mille Lacs Band of Chippewa, Mille Lacs County, and the State of Minnesota over tribal members' boundary recognition, hunting and fishing rights, law enforcement and many other issues (A. Treuer, 2012; Smith, 2017). Indeed, the Mille Lacs Band has played a prominent role nationally in advocacy for tribal sovereignty and for native hunting, fishing, and gathering rights in ceded territories through a series of precedent-setting court cases (Anderson et al., 2015; Jorgensen, 2007).

Due to this context, it was not timely for the research team to request interviews with the tribal police department or county sheriff's department. Although four individuals from tribal and county law enforcement units did agree to do background interviews, we do not have data to analyze and thus cannot draw conclusions regarding the law enforcement aspects of roadway safety in Mille Lacs. Nonetheless, it is essential to mention this context because it potentially has important consequences for roadway safety. And, it should be noted that at the same time that the band was in an unresolved dispute with Mille Lacs County, it was **strengthening** its policing coordination agreements with Pine County, which overlaps other parts of the reservation (Smith, 2017).

⁴ In the short period between the 2015 Department of Interior decision and the County's decision to sever the policing arrangement, this issue also arose in the data from a completely separate research project about public participation in infrastructure funding in Minnesota (Narváez & Quick, 2017). One of the Co-PIs on this project was told by a Mille Lacs County commissioner that the county intended to reject nearly any initiative by or cooperative arrangement with the Mille Lacs Band. This comment was made as a blanket statement, apropos of nothing in particular, without awareness of the Co-PI's involvement with the tribe on this reservation roadway safety project. This implies that an oppositional stance is a pervasive feature of Mille Lac County's relationship to anything involving the Band government or reservation area.

4.4 LEECH LAKE BAND OF OJIBWE

4.4.1 The reservation context

The Leech Lake Band of Ojibwe reservation is located in northern Minnesota (Figure 4.2). The reservation boundaries encompass a contiguous area of 1,350 square miles (Figure 4.17). The 11 communities of Leech Lake Band members are dispersed widely over this very large area, in the city of Cass Lake (which is also tribal headquarters) and villages of Ball Club, Bena, Cass River (also known as Pennington), Inger, Onigum, Mission, Smokey Point (including Kego Lake and Boy Lake), Sugar Point, Oak Point, and S. Lake (Leech Lake Band, 2018).

As of 2015, the Leech Lake Band had 9,509 enrolled members, approximately half of whom lived on the reservation (Leech Lake Band, 2018). Approximately 4-5% of land within the reservation boundaries remains in tribal ownership (Figure 1.2), the smallest percentage of tribal land control among the six members of the Minnesota Chippewa Tribes. Over half of the land is in the ownership of other government entities, including county, state, and federal governments. In fact, 75% of the US Forest Service's National Chippewa Forest lies within the reservation (Leech Lake Band, 2018). The reservation intersects with four counties: Beltrami, Cass, Hubbard, and Itasca (Leech Lake Band, 2018).

With national forests and three large lakes in this particular area of the "North Woods," the land and water within the Leech Lake reservation are popular destinations for tourists and Twin Cities residents who have cabins in the region. American Indian people – of any tribal affiliation – comprise about 46% of all residents of the Band's reservation and trust lands, a smaller number than the 51% of the total 10,660 residents who identify as White alone (American Community Survey 5-Year Estimates, 2012-2016).

These three features – the diffusion of band members and dilution of tribal land ownership over this large area; the rural, wooded landscape; and the strong presence of non-American Indian residents, businesses, and seasonal tourists – impact roadway safety in several ways. Many band members travel long distances to access the centers of activity for the tribe in Cass Lake (e.g., the schools, Indian Health Services clinic and hospital, and services, entertainment, and employment in the government offices and casino). Many roads have the same roadway safety risks as other rural roadways of the state. And, much of the property is owned by non-native people – owners of private cabins, resorts and other tourism-related businesses, the US Forest Service – who have representation and influence through other jurisdictions overlapping the reservation. Thus, even if the Leech Lake Band police department were sufficiently resourced with people and equipment to cover this large area, it is not certain that non-tribal members would recognize their authority.

4.4.2 Data sources

On 17 occasions between October 2013 and July 2018, a member of the research team spent three to ten consecutive hours on the Leech Lake reservation conducting fieldwork, getting to know the roads,



Figure 4.17 Leech Lake reservation communities and boundaries

Source: Ryan Anderson, using source data from the Leech Lake Band of Ojibwe, Minnesota Department of Transportation, and Bureau of Indian Affairs. Downloaded from Leech Lake Band website May 1, 2018.

becoming familiar with the context, doing interviews with people with key knowledge of roadway safety issues on the reservation, or tabling at community events. A total of 18 interviews were conducted with tribal, county, or state government leaders with responsibilities for some aspect of roadway safety in the reservation. In addition, on the encouragement of staff of the tribal government, we tabled at pow wows in Cass Lake and in Onigum, where we spoke with 25 members of the general public. While we

interacted with a relatively small number of reservation residents (in comparison with the other reservation case studies), these interviews tended to be longer and more in-depth, with four of the 25 people each speaking with us for over 30 minutes regarding their roadway safety concerns.

4.4.3 Key safety concerns and opportunities

Positive feedback on roadway safety improvements. Tribal government leaders (across transportation, law enforcement, and public health), reservation residents, and coordinating government agencies (county governments, the school district, Indian Health Service facility, and Minnesota Department of Transportation) all praised a number of recent engineering improvements, described below. They are particularly positive about completed or planned improvements to US-2, the US-2 and MN-371 intersection, the US-2 and Cass County 75 intersection, re-engineering of Mission Road, and pedestrian/bike trail connections with the Cass Lake Middle School/Cass Lake-Bena High School complex.

Pedestrian safety. Transportation safety experts with extensive knowledge of Leech Lake repeatedly emphasized pedestrian safety risks as their most distinctive and strongest concern about roadway safety in this reservation. As they emphasized, people move around the reservation on foot a lot, because of preference, long traditions or habits of walking between villages, or lack of access to vehicles or transit. When asked if there was anything distinctive about the reservation relative to the rest of the region, people commented:

It's not an urban area, but there are pedestrians like an urban area. [comment made by the county engineer of an overlapping county]

I see lots of people walking along the road or in the bike trail, but if there is no bike trail they will walk in the road. [reservation resident]

You should use a crosswalk to cross the road, but there isn't always one available. [reservation resident]

Residents expressed special concern for children's safety. When we tabled at pow wows, two residents made pointed comments about a double standard that seems to prioritize protection of tourists over local, reservation residents:

I live in Pennington. About 20 kids cross the road to get to and from the playground all of the time. It must be about five times a day that we hear [car] horns, or sometimes tires squealing, because kids are crossing the road. Up the road where the tourist resorts are, there are Kids at Play signs, but none for our kids. I called the county to ask for them, and they said, "If you want signs, put them up yourself."

Why are there "Kids playing" signs as you approach resorts, but none around rez housing?

United States Highway 2 (US-2). US-2 is a very busy, four-lane highway with a posted speed limit of 65 mph just outside the city limits of Cass Lake. There are four areas of concern along US-2, mostly relating

to pedestrians: 1) between Cass Lake and Bena; 2) in Cass Lake at the intersection of US-2 and MN-371; 3) in Cass Lake where US-2 runs between the Cass Lake-Bena Elementary School (south side) and the tribal headquarters (north side); and 4) in Cass Lake at the intersection of US-2 and Cass County 75.

1. *Cass Lake to Bena 18-mile stretch.* Bena (one of the major residential areas of Leech Lake Band members) and Cass Lake (the largest town on the reservation, location of the tribal government headquarters, one of the elementary schools and the junior and senior high serving most tribal members, grocery stores, and hospital) are 18 miles apart. Study participants reported and the researchers observed that people often set out on foot to travel between Bena and Cass Lake, walking along the berm of MN-2 (near Bena) or along a regional bike path that parallels it for a short distance near Cass Lake. These comments are typical of the feedback from people who stopped at the researchers' table at the Labor Day pow wow to discuss their roadway safety concerns:

Recently I moved away, but I always noticed, and I still do when I come back, how many people are walking in town and between Bena and Cass Lake. I worry about them being protected from traffic, especially in town and also west of Bena on the highway.

I drive between Cass Lake and Bena almost every day [on US-2]. Where there are conifers [evergreen trees], the road is shaded and it's always very icy. I love trees. I'm a tree hugger, but something needs to be done here. Someone did lose their life there in an accident where it was icy. The road is getting better with improvements made recently, like turning lanes, and road widening, and removing some trees, but they need to remove more trees right up close to the road.

Drivers passing by often offer rides to people walking along US-2, which reinforces the pedestrians' desire to walk close to the highway. Indeed, the tribe's police department told us that they make a point of regularly patrolling this stretch of highway in winter to protect pedestrians from extended exposure to very cold temperatures.

2. *Intersection of US-2 and MN-371.* There is particularly high pedestrian movement right around the intersection of US-2 and MN-371. MN-371 was recently widened to 4 lanes for much of its length to accommodate a heavy volume of people that use it as the major north-south route for traveling between the Twin Cities metro region and cabins and recreation in the Leech Lake region. MN-371 effectively ends at this intersection (because traffic north of the intersection is almost entirely local), meaning that almost all traffic traveling northbound on MN-371 turns through the intersection onto US-2 (Figure 4.18).

While there is a traffic light at the MN-371 and US-2 intersection, pedestrians are still in danger here. There is heavy foot traffic here because this is the location of the closest grocery store to residential areas, the town of Cass Lake, and many of the tribal service centers (e.g., the hospital and tribal government offices), yet there are no crosswalks and the traffic island in the middle is not designed as a pedestrian refuge.

The Leech Lake Band is building a new casino facility at the northwest corner of this intersection, which will likely increase both vehicular and foot traffic through this intersection. As the Leech Lake transportation department leadership recognizes, this presents both potential risks and positive opportunities for improvements in vehicular and pedestrian safety. The final configuration for the roadway improvements are not yet decided, but one proposal under discussion is to improve sidewalk facilities along MN-371, at least as far north as the new casino and as far south as the railroad crossing to the south of the intersection. The data collected throughout this case study strongly indicate that improving pedestrian safety in this area is an exceptionally high priority.



Figure 4.18 Pedestrian in busy intersection of US-2 and MN-371, Cass Lake

Source: Guillermo Narváez.

3. *US-2 by Cass Lake-Bena Elementary School.* While there have been many improvements made to safe routes to school elsewhere on the reservation (as detailed below), there is particular concern about pedestrian movement across US-2 near the Cass Lake-Bena Elementary School. The school is immediately south of US-2, across the highway from several popular businesses (e.g., Dairy Queen) and two key tribal government offices (the Leech Lake government headquarters and the housing authority). During interviews with tribal officials, school staff, and residents, we repeatedly heard that young children are discouraged from walking to and from the school because of the extremely heavy, high-speed truck and car traffic on US-2, and the school district does provide bus service for them. Nonetheless, there are multiple, well-worn footpaths across the grassy, median strip of US-2 where older youth, school employees, and other residents regularly cross (Figure 4.19).

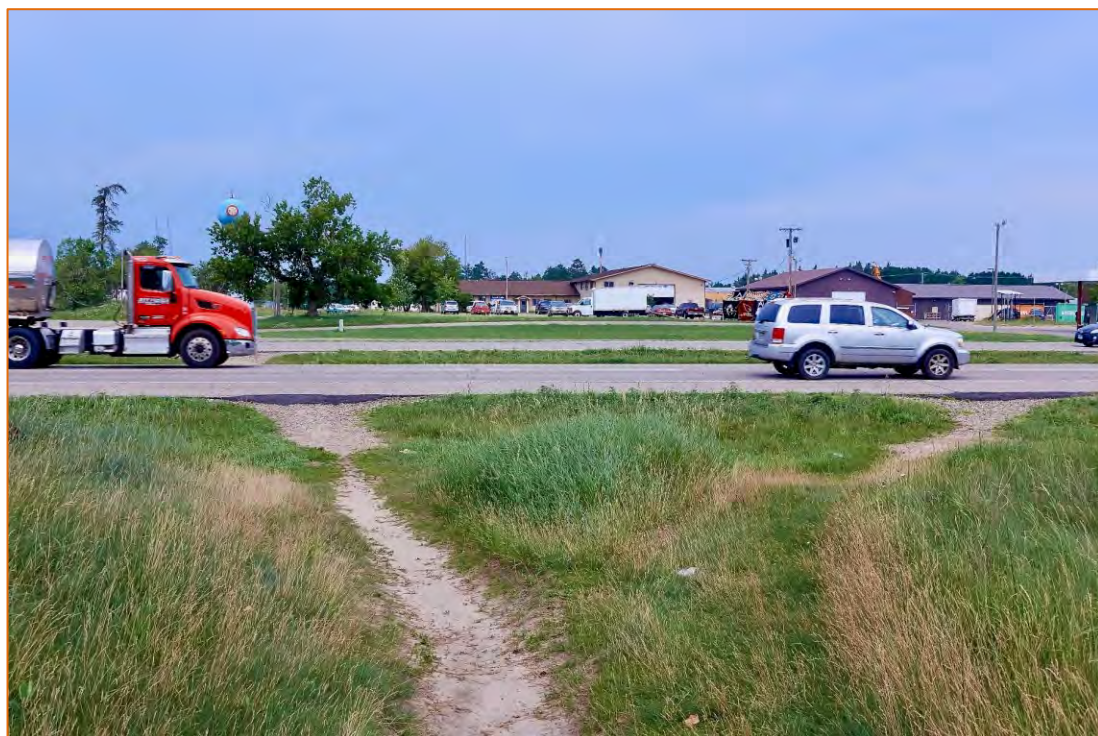


Figure 4.19 Multiple pedestrian footpaths across dangerous stretch of US-2, Cass Lake.
 Sources: Google © 2018 (top); Guillermo Narváez (bottom).

The pedestrian improvements proposed for the area around the intersection of US-2 and MN-371 are 0.4 miles east of this stretch of US-2. Because it is unlikely that people would walk an additional 0.8 miles to cross move between destinations just across US-2 from each other, additional measures may be needed specifically in this area to improve pedestrian safety.

4. *Intersection of US-2 and Cass County 75.* Study participants also expressed acute concern about pedestrians crossing US-2 to get back and forth between the center of town (south side, location of grocery store, schools) and the Leech Lake tribal college and the current location of the Palace Casino (north of US-2 and CR 75). When we tabled at a pow wow in the pow wow grounds between the Palace Casino and the Leech Lake Tribal College, multiple reservation residents mentioned that there had been serious pedestrian accidents, including a fatality, along this stretch of CR 75. They were somewhat reassured by a new pedestrian and biking trail that parallels part of this section of CR 75, although they were also concerned that it was on the opposite side of CR 75 from the school and casino and did not go as far north as the casino.

However, they remained especially concerned about people getting to and from CR 75 across Minnesota Highway 2. This was also a prominent concern of transportation engineers and public safety professionals from the tribe, county, and state of Minnesota, during interviews. The Band's tribal roads director, Art Chase, had previously identified US-2 and CR75 as a "sustained crash location" (Chosa, 2018).

Fortunately, the Band and Minnesota Department of Transportation successfully collaborated to create a reduced conflict intersection, which includes turning lanes on US-2 and a J-turn configuration to prevent vehicles crossing US-2 directly at this intersection (Chosa, 2018). These are promising safety improvements but concern remains regarding pedestrians moving on foot between town and the school and casino, which are major centers of employment and activity.

Safe Routes to School. The Leech Lake tribal government, School District, and Leech Lake Community College have been emphasizing safe walking and cycling routes to school. They have made several exciting infrastructure improvements in the last several years. Residents who participated in brief surveys at community events, expert drivers who travel the area extensively, and leaders of the tribal government and school district consistently name this as a success and priority for continuing improvement. The three main points regarding safe routes to school, are: (1) the serious consequences for students of closing schools in winter; (2) praise for improvements and inter-jurisdictional cooperation on pedestrian/bicycle connection improvements to the middle and high school complex; and (3) the aforementioned concerns about pedestrians crossing US-2 by the Cass Lake-Bena Elementary School.

Serious consequences of closing schools in winter. An important feature of safe routes to school is winter roadway access and safety under snow and ice conditions. Schools everywhere are not only educators but daytime caretakers for children. In Leech Lake, the vast majority of students in the public schools qualify for free or reduced lunches, and thus the schools' care for the whole child has another level of significance. School district and tribal government leaders worry that many children may be hungry or

cold at home if schools must be closed because roads are not passable due to winter weather conditions. Fortunately, there have been no bus accidents in winter driving conditions. However, the district covers a large area and is dependent upon multiple local governments to sustain attention to clearing snow promptly and managing cleared roads to minimize ice from low temperatures and roadway shading in these forested areas. Policy-makers and road maintenance managers for other jurisdictions need to keep at the top of their minds the particular consequences of school closure for these students.

Cass Lake-Bena Elementary School.

The serious, unresolved concerns about pedestrian safety for employees, parents, and children crossing US-2 are discussed above (Figure 4.19).

Cass Lake Middle School and Cass Lake-Bena High School campuses.

In 2015, the Cass Lake-Bena School District Board adopted a Safe Routes to School plan to encourage youths to walk or bicycle safely to the middle and high school south of Cass Lake, which serve most each Lake Band students of this age.

Many youths were already using the Heartland State Trail to travel between the town of Cass Lake and school (Figure 4.20). The Heartland Trail is a long-distance bike and pedestrian trail that is part of the statewide trail system. The segment which runs parallel to MN-371 between Cass Lake and the school district was created and is maintained through collaboration between the tribe, school district, Minnesota Department of Natural Resources,



Figure 4.20 Students using Heartland Trail to get to school

Source: Cass Lake-Bena School District (2015).



Figure 4.21 Extension of bike/pedestrian trail into school

Source: Guillermo Narváez.

MnDOT, Cass County, City of Cass Lake, and Pike Township.

However, until recently there was not a continuous sidewalk or bike path for students to travel the final 0.4 miles between the Heartland Trail and the middle school and high school buildings. Before and after school, pedestrians and cyclists were sharing a crowded, narrow road into the school campuses with buses, employees, young drivers, and parents dropping children off. Happy with walkers' and cyclists' physical activity but concerned for their safety in the final approach to the school, the Cass Lake-Bena School District (2015) conducted a community walking audit of this area. It resulted in the creation of a beautiful, protected path to the school as well as other improvements to signage and traffic circulation (Figure 4.21).

Cooperation with local governments. Leech Lake overlaps with parts of four counties. Not surprisingly, the Band's relationships with the public works, emergency response, and law enforcement units of the respective counties are variable. In some cases, there is little interaction, for example because there are few Leech Lake Band members residing in that county. In other cases, there is a strong or improving relationship. Examples of positive collaborations to produce mutually desired outcomes include:

1. *Safe routes to school improvements.* The positive outcomes of cooperation between the school district, tribal government, MnDOT, Cass County, and Pike township to improve bike and pedestrian facilities to access the middle and high school campuses, were just described.
2. *Law enforcement cooperation.* The sheriff's departments of all four counties cooperated with the Band's police department in 2017 to disrupt illegal drug activity on the reservation, which contributes to addiction and has other community impacts, including impaired driving (*Bemidji Pioneer Staff*, 2018).
3. *Mission Road improvements.* This Beltrami County road was a very high priority to reengineer due to sharp corners, steep shoulders, and trees close to the road, and thus the risk – and indeed the history – of severe injury. The Mission community, one of the major housing areas for tribe members is along the road, and traffic to and from this area was unusually heavy for a rural area. The tribe identified it as the worst Beltrami County road, and while Beltrami County does not rank its roads, the county transportation department agreed that the road was dangerous because it was narrow and had sharp curves with trees. The tribe had a strong desire for a wider road because many

Table 4.1 Mission Road: Features of a success story of inter-jurisdictional cooperation

- The roadway safety danger was high and compelling to both parties.
- Both parties were willing to prioritize the project and commit resources.
- The two parties were mutually dependent on one another to assemble funding for engineering and construction, labor, and property owners' permissions.
- Both parties faced a shared obstacle – getting property owners' or federal agency permission to proceed – that they resolved by cooperating.
- The design was modified to respect tribal members' values, e.g. to protect trees.

Leech Lake community members walked along the road, and there had been pedestrian fatalities on a nearby road (County Road 75, near the Palace Casino). Thus, improving Mission Road was a high priority for both Beltrami County commissioners and Leech Lake Band tribal leadership (Table 4.1).

Even so, it took years to complete the project, primarily because the allotment system and resulting checkerboard of land ownership (explained in Chapter 1.3) meant that there were hundreds of property owners to work with on right of way arrangements. One project participant explained the challenges and their solution this way:

There could be 300 people who owned a part of that parcel; you have to make an effort to get the signature of everyone not just for allotment but for noticing, permission to enter land to survey, etc. [The tribal government] went door to door, we all had a community meeting on site, and we made some design changes to satisfy people living there, such as a curb and gutter instead of ditches, and a heavy-duty fence instead of a guardrail at a curve, so we didn't have to remove so many trees. But, you'll never get 300 people to say yes, so this was primarily to get to the point of being able to get BIA [Bureau of Indian Affairs] to agree that the project is for a public benefit, that we'd done lots of outreach, and waive the requirement that we literally hear back from enough of those people. Normally the county would make that request to BIA because it's a county road, but the tribe handled it.

Both Band and county leadership stated in interviews that \$1 million in funding from the tribal government and the tribe's advocacy “pushed the project to the top” of the county's road

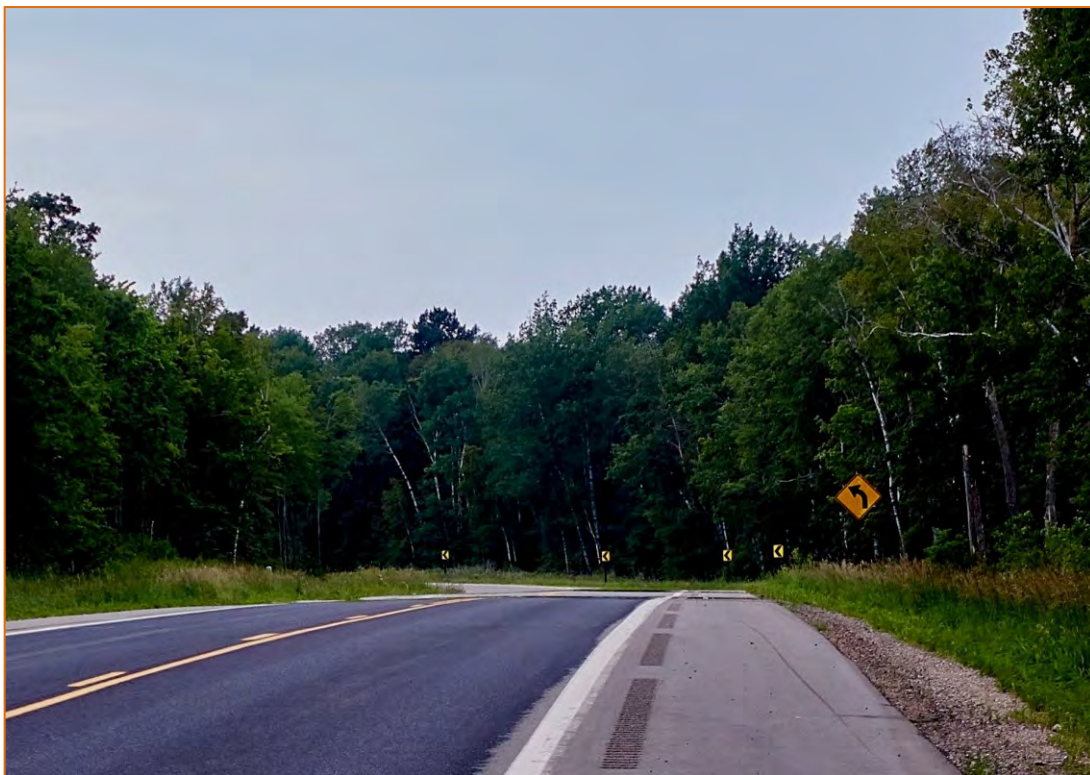


Figure 4.22 Mission Road engineering and signage improvements, Leech Lake reservation

Photo by Guillermo Narváez.

construction and improvement list. The finished project features rumble strips, curve and chevron signage to warn drivers of the sharp turn, and straightening to reduce the risk of off-road crashes at curves (Figure 4.22).

Driver behavior concerns include impairment and non-resident drivers. Data from Leech Lake exemplify the difficulty of finding patterns in study participants' responses to questions about impairment and driver behavior. Their statements about whether impairment is – or is not – a particular problem on the reservation were sometimes directly in conflict with one another:

It doesn't change much, between the reservation and off the reservation. We get issues with speeding across the whole area and impaired driving across the whole area. [Law enforcement professional of county overlapping the reservation]

I'm concerned about drunk driving. I see it a lot. [Researcher: Are there any particular places or times where you see it?] *I would prefer not to say.* [Leech Lake enrolled member who resides on reservation]

We saw more people driving while impaired – not necessarily alcohol, it might have been drugs – than I've ever seen in other areas. [Road construction professional, talking about a recent experience doing road work on the reservation]

Making assumptions about impairment is a feature of racial profiling of American Indians. Thus, many study respondents took great care not to overstate or exaggerate, possibly sometimes erring on the side of understanding their concerns. Generally, the question of impairment among racial minorities probably qualifies as a “nervous area of government” (Gooden, 2015) which people are reluctant to discuss. Our analysis is neither the data cannot be trusted nor that there clearly is or is not a problem; rather we recognize that the data must be interpreted within this very sensitive context.

On the other hand, there was a high level of consistency in concerns about non-residents driving on the reservation. As mentioned, there are many second homes (e.g., hunting cabins, lakeside vacation homes, etc.), hotels, and rental properties in the area. Consequently, there are regular influxes of people coming through reservation communities who do not know the area. On top of the typical roadway risks they expect in rural and wooded areas – poor visibility, narrow shoulders, or deer and other animals on the road – they typically do *not* expect to find so many pedestrians on the road. As the quotations above from reservation residents about pedestrian safety attest, visitors are often cued to drive carefully through resort areas because vacationers may be crossing the road. The reservation residents who participated in this study are concerned for the safety of children in reservation communities, and resent that there are not more signs to warn drivers to be aware of and protect American Indian children.

CHAPTER 5: KEY FINDINGS AND RECOMMENDATIONS

This research has generated new sources of data and provided important insights to address the unusually high rates of MVC fatalities and injuries among American Indians. Very little prior research has focused on roadway safety in reservations, which – as home to 22% of American Indians – is a significant context for understanding the roadway safety risks for this population.

The contributions of the study are:

- **Identification of high-priority reservation roadway safety concerns.** Analysis of the case study and national survey data indicate five key areas – *pedestrian safety, road engineering and repair, reckless driving (not necessarily due to impairment), seatbelt and car seat use, and inter-jurisdictional coordination* – as described in the recommendations below (Chapters 5.1-5.5).
- **Inter-agency coordination needs:** Case study and survey data strongly indicate the vital importance of high-quality coordination between tribes and federal, state, and local governments in reservations. This is the first study to investigate the positive – or negative – consequences for reservation roadway safety and resource efficiency of cooperative, complementary, or divisive relationships among these entities.
- **Data generation through qualitative methodologies:** This study developed and modeled qualitative research methods that create new data sources and facilitate in-depth analysis and problem-solving in particular reservations (Chapter 2, Appendices A-C). They emphasize the perspectives of people with the most direct, informed knowledge of reservation conditions. (Additional empirical and methodological research development needs are summarized in Section 5.6).

In this final chapter, we recap the key findings related to the research questions driving this study:

1. What are the key sources of roadway safety risk in reservations, according to people with direct knowledge of and responsibility for reservation roadway safety?
2. What is distinctive about roadway safety in reservations, if anything, relative to other areas?
3. How are relationships among agencies with overlapping responsibility for roadway safety in reservations affecting safety?
4. How can roadway safety in reservations be improved?

In the following sections, we state findings that are consistent across multiple sources, including previously published literature, national statistics, these case studies, and the national survey. We also identify the key concerns and recommend policies, programs, or resources to reduce roadway injuries and fatalities in reservations. The key concerns and recommendations are summarized in Chapter 5.7.

Before presenting findings from the data about the key sources of roadway safety risk in reservations, and what (if anything) is distinctive about reservations, we need to recall an unspoken factor: *pervasive*,

systemic poverty and isolation in reservations, which threaten driver safety. Paradoxically, these dynamics are such a strong feature of reservation life that they often escape explicit mention by study participants. Poverty and isolation have multiple implications for roadway safety. To name a few, reservation residents have long drives to access employment, education, or services. Reservations often, though not always, are rural, meaning they have the same elevated roadway safety risks – e.g., poor visibility, wildlife, or slippery conditions – as other rural areas. With higher rates of poverty, fewer residents have access to vehicles in good repair. These features interact to elevate injury risk.

5.1 PEDESTRIAN SAFETY IS A CRITICAL, DISTINCTIVE, AND UNDER-RECOGNIZED PRIORITY

The data from all sources are unequivocal that pedestrian safety is a critical, distinctive, and under-recognized priority in reservations. We have extensive data from interviews and brief surveys with hundreds of people with intimate knowledge of four reservations in Minnesota, as well as 75 days of observations during on-site fieldwork in reservations. In all four case studies, everyday roadway users (residents and expert drivers) and tribal government leaders from all “4E” sectors (engineering, enforcement, education, and emergency response) repeatedly stated, in response to open-ended questions, that pedestrian safety was their greatest concern and priority. Furthermore, the data clearly establish that in reservation communities many people move around on foot by necessity and preference and that pedestrian safety is the **single most distinctive feature of reservations**, relative to rural areas more generally. Dozens of study respondents, safety experts and laypeople alike, make statements to the effect that the big difference between roadways in reservation and non-reservation areas is the number of people walking.

Similarly, in the national survey of tribes, “inadequate pedestrian facilities” was the fourth most frequently identified concern – among over a dozen possibilities – by the 150 tribal government respondents. In contrast, non-reservation residents – for example, local government, state, or federal agency staff – were less likely to name pedestrian safety as a particular concern, even when asked directly about it. Our interpretation of these data is that they lack familiarity with reservation contexts. While it may be true that pedestrian fatalities do not turn up with notably high frequency in crash reports and statistics, which would be the lens that most outsiders have into reservation contexts, the data from the ground is unequivocal about the level of perceived risk to pedestrians and the self-protective behaviors that residents use to manage the risks (e.g., not allowing children to walk or bike on the roads).

Thus, **pedestrian safety** is the answer to the first and second research questions. It is a key source of roadway safety risk in reservations, according to people with direct knowledge of and responsibility for reservation roadway safety. And, it is a distinctive feature of roadway safety in reservations when compared to roadway safety generally in rural areas.

This is a novel and important finding of this study. While there has been relatively little previously published research to suggest that pedestrian safety is a particular concern in reservations, the overwhelming prominence and consistency of this issue in the case studies and national survey indicate

that pedestrian safety is a priority. In addition to the accident risks, there is another public health implication of this finding: there is a paradoxical tension between encouraging people to walk, jog, or bicycle for health and recreation, and lacking the infrastructure for people to do so safely. Walking is not going away, nor should it. ***Infrastructure investment, signage, enforcement, and education to protect pedestrians in reservations is extremely important.***

5.2 ROAD ENGINEERING AND REPAIR NEED SUSTAINED RESOURCES.

In the case study data, road quality does not appear as a key concern for roadway safety. In fact, the most consistent assertion made across the four study sites – by engineers for tribal governments and other agencies – is that they see no particular difference at all in roadway engineering, off and on reservations. Public works professionals who are responsible for county, city, or state road systems that are partly inside reservations seem to take great pride in a high degree of quality and consistency in roadway engineering of county and state roads, regardless of location. This is a positive practice and value to sustain, for the purposes of both roadway safety and equity.

Conversely, In the national survey, ***road quality engineering and repair are very high priorities for both tribes and states.*** Asked to identify their top three priorities for reservation roadway safety from a long set of options, the single most frequently selected item among the 150 respondents from tribal governments was road infrastructure (curves, ditches, lighting, and surface conditions), while the third most frequently selected was road maintenance. The fact that road quality engineering and repair is an extremely high priority concern among tribes nationwide indicates the continuing importance of federal and state programs to fund roadway infrastructure improvements and repair in American Indian reservations.

5.3 IMPAIRED DRIVING MUST NOT BE ASSUMED TO BE “THE” EXPLANATION.

The case study and national survey data strongly confirm that ***enforcement and education to reduce reckless driving are high priorities.*** In the national survey of tribal governments, reckless driving – speeding, impaired driving, and distracted driving – was the single most frequently raised concern among tribal government respondents. This indicates that continuing investment in injury prevention programs, roadway safety enforcement, and public health campaigns – including the Safety Circuit Rider program – remain critically important.

Similarly, the case study data are strong and unambiguous about another form of impairment, namely ***driving while distracted by texts and other cell phone use.*** Reservation residents, expert drivers, and law enforcement officers in all four case studies repeatedly stated their acute concern about the dangers of this particular driver behavior, which they observe increasingly more frequently in their reservations.

These findings challenge prior research and conventional wisdom in two ways. First, the finding about cell phone use is novel; while this relatively new phenomenon is an increasingly recognized roadway

safety issue generally in the United States, to our knowledge, no research has been done in reservation environments, and this implies a need for additional study.

Second, this research ***challenges commonplace assumptions and understandings about drinking and driving or drug use*** as an explanation for American Indian mortality rates. Discussions about impaired driving were complicated in this study, as they would be in any research on the question of roadway safety and American Indian drivers. On the one hand, many people with no little or no experience of reservation contexts confidently told members of our research team, “Drunk driving must be the explanation” for high rates of MVC among American Indians. Yet, they seemed to have no data or experience that would ground them to make a conclusion, one way or the other, about the presence or absence of impaired driving and its effects in reservations.

Fortunately, many other people are well aware of the context of prejudice that has given rise to and made use of damaging stereotypes about American Indians and alcoholism (Trimble, 1988). This awareness made many participants in interviews and in-person surveys not only cautious to avoid overstating issues, but seemingly reticent to discuss the issue at all. Because impaired driving is implicated in negative profiling of American Indians, like other areas of race and policy, it is what Gooden (2015) describes as a “nervous area of government.” To be clear, as scholars and authors of this interpretation, we are neither saying that these data are “contaminated” nor that they can be read with a particular conclusion about impairment and reservation roadway safety. Rather, the data must be interpreted with this highly charged context in mind. In a future paper, we expect to revisit the data on impairment in much greater depth to illuminate these nuances. For now, the conclusion we reach is: ***impaired driving must not be assumed to be “the” explanation for high fatalities among American Indians or in reservations.***

5.4 EDUCATION AND ENFORCEMENT TO INCREASE SEATBELT USE ARE ESSENTIAL.

The literature identifies the incomplete use of safety restraints – not using seatbelts or child safety restraints, or not installing and using them properly – as key explanations for the high rates of fatality and severe injury among American Indians nationwide. This study is not designed to determine whether or not people do or do not use seatbelts and car seats regularly and properly in reservations. That kind of question is better addressed through a quantitative research approach involving a statistically significant, randomly selected sample of reservation populations that would be representative in terms of gender, age, and household composition. Nonetheless, these data do reveal some important trends.

The national survey of tribes confirms that ***improving seatbelt and car seat use is a high priority.*** Combined, seatbelt use and proper use of child seats are the third most frequent response to a survey question asking respondents to select their top three priorities from a menu of safety concerns. In addition, of the 150 respondents, 22 named seatbelt use and 8 named child seat use in response to an open-ended question about their major roadway safety concerns.

Seatbelt and child safety restraint use was *not*, however, a commonly identified, high-priority concern in the data from our case studies, which is why there is little discussion of this question in the case study

write-ups. An injury prevention expert in one case study site sadly shared an observation that many child safety seats seemed to be thrown away without being used very much. In contrast, the Fond du Lac reservation has won statewide “Toward Zero Death” awards for its work in Minnesota and is well recognized for its active and successful injury prevention efforts to improve access to and use of child safety restraints. In other settings the injury prevention specialists were cautiously optimistic because, over a series of periodic roadside surveys of seatbelt and restraint use among passing cars, their data indicated increasing rates of use. In the Leech Lake reservation, the tribe’s self-described “car seat lady” is accustomed to being flagged down in grocery store parking lots and elsewhere while she is out in the community by families who ask her to check their car seats. The positive examples from the case studies **reinforce the importance of having a steady, familiar, trusted person or group work persistently on these issues on the reservation**. This indicates that continuing investment in injury prevention programs, roadway safety enforcement, and public health campaigns – including the Safety Circuit Rider program – remain critically important.

5.5 TRIBES NEED BETTER COOPERATION WITH LOCAL, STATE, AND FEDERAL AGENCIES.

Previous research hinted that coordination problems among jurisdictions might impede enforcement, road engineering and maintenance, and record-keeping to identify and address key roadway safety concerns (Fleisher et al., 2016), and that productive collaboration is valuable for reducing motor vehicle fatalities in reservations (Letourneau & Crump, 2016). However, little empirical research has been done on tribal governments and inter-jurisdictional cooperation around any policy concern (Ronquillo, 2011), and roadway safety is no exception. Therefore, we included a third research question: How are relationships among agencies with overlapping responsibility for roadway safety in reservations affecting safety? The answer, based on analysis of the case studies and national survey data, is that **the quality of relationships among different functional areas (e.g. engineering, enforcement, education, EMS) and among different units of government (e.g., tribe, state, and county) is critically important for addressing roadway safety concerns**. The data confirm hunches that tribal governments find these relationships important and that there are serious gaps and barriers in these relationships. Analysis of the data also points to two specific areas for improvement.

5.5.1 Need 1: Address mismatched perceptions of ground conditions through improved data quality and sharing and an expansion of knowledge sources.

The gold standard for most roadway safety planning is crash data. Problems with crash data quality, completeness, and sharing between tribes and other jurisdictions are a frequent topic of national technical assistance programs and studies of traffic safety in reservations. In this study, one of the prominent, consistent patterns in the national survey of state transportation agencies is that state agencies have a great appetite for improving connections for data sharing to support analysis and problem-solving around shared goals. Responses from state agencies also indicate that they recognize that tribes need more resources to have the capacity to document, share, and analyze data.

However, when we turn to the case study data, we find patterns that suggest that ***longstanding concerns about roadway safety data need to be revisited so that other ways of knowing and kinds of data are shared and valued***. In the case study data, there is a strong mismatch of perceptions of roadway safety risks between tribal government employees and reservation residents (on the one hand) and state or county governments (on the other hand), particularly relating to pedestrian safety. We find a strong pattern of acute concern about pedestrians expressed by people with on-the-ground knowledge, compared with inattentiveness of safety experts outside the reservation to pedestrian concerns (Chapter 4). For example, the failure of state database users to recognize pedestrian risks that were patently obvious to dozens of residents of the Fond du Lac reservation – as depicted in Figure 4.12 – suggests that the “data problem” is not just a matter of making on-reservation crashes visible to safety engineers and policy makers through traditional data sets.

Rather, the solution also involves paying more attention and respect to the expert, local knowledge and informed judgment of people with intimate familiarity of the conditions on the ground. While crash data is very informative, it is limited in a few ways. First, in rural areas the crash counts may not be very high (fortunately), so problems do not stand out the same way that they might in areas with higher traffic volume. In addition, crash statistics are records of what has already happened *and* been reported, not about near misses and strategies people use to avoid risk. These records do not reveal behaviors that people use to manage what they interpret as safety risks, such as where or when they do not drive or walk when it is icy, after dark, etc. Notably, one of the key areas left out of crash reporting is the strategies people use to avoid harm as pedestrians.

The data collection resources developed in this project are useful for tribal governments as well as researchers. Data quality, quantity, and access are well-recognized concerns in reservation roadway safety management. The tools laid out in Chapter 2 and Appendices A-C were developed to fill some of the gaps. They involve doing qualitative interviews with key stakeholders and a simple community survey method using maps to gather residents’ knowledge of local road safety hazards. These methods can be used by tribal governments and others to prepare Tribal Safety Plans, identify focal areas for Road Safety Audits, and improve transportation and safety policies and implementation. These new methods offer three advantages: 1) they generate new types of data to address data limitations; 2) complement data on accidents and fatalities that have already occurred with local knowledge of road conditions and other risks; and 3) facilitate collaboration among tribal, county, state, and federal entities. As this research demonstrates, these data collection methods support the discovery of new insights on key safety risks in American Indian reservations, particularly relating to pedestrian and bicyclist safety, policy design and implementation, and inter-agency collaboration.

5.5.2 Need 2: Improve coordination for resource sharing, planning, and implementation, especially for infrastructure and enforcement.

The case studies demonstrate that coordination among overlapping jurisdictions with some scope of responsibility for roadway safety within the reservation boundary (tribal, township, city, county, state, and federal) is consequential. For example, it matters a great deal whether the relationship among

county and tribal public works departments, tribal and township road maintenance crews, or tribal police and county sheriff's departments, is cooperative, complementary, or divisive. The case studies reveal examples of both positive, synergist relationships (e.g., between the Leech Lake Band of Ojibwe and Beltrami County and the Minnesota Department of Transportation for road and pedestrian infrastructure improvements) and antagonistic, damaging relationships (e.g., the breakdown of cooperation between the Mille Lacs Band police department and Mille Lacs County sheriff's department).

It is not productive to recommend a single set of best practices to improve relationships. As the case studies demonstrate, the situated context of each tribal government, community, and reservation is important. For example, law enforcement relationships are complex. In some reservations, tribes defend strongly their sovereignty and self-determination and find that it is vital for mutual trust and safety to have their community members interact with tribal police department officers, and thus do not welcome engagement from other law enforcement entities. In other reservations, the tribal police departments and other law enforcement units collaborate to accomplish synergetic responses to shared concerns. However, both the case study data and states' responses to the national survey imply a need for: 1) more education of state employees to understand and recognize sovereignty and tribes' special status in consultation arrangements; and 2) more resources so that tribes can have the capacity to document, share, and analyze data.

5.6 SUSTAIN AND EXPAND RESEARCH ON RESERVATION ROADWAY SAFETY.

Sustain additional research on the three research questions of this initial study. This study has produced new findings relating to the three research questions, regarding the key roadway safety risks in reservations, what distinguishes roadway safety in reservations from other areas, and the current conditions of inter-jurisdictional cooperation for roadway safety in reservations. These questions have rarely been explored, and thus much more research is needed in all of these areas.

This study also points to the need to expand research into several additional areas:

1. ***Study the effectiveness of roadway safety improvement interventions through empirical research in collaboration with tribes.*** This study gathered informed perspectives from key stakeholders regarding roadway safety risks. It is also important to study their assessments of whether, what, and how well different policies and programs work, especially those involving behavior. For example, reservation leaders and residents would have invaluable insights about how effective different efforts to improve safety belt and car seat use actually are, and whether the keys to success (or barriers) are resource availability, attitudes, and/or enforcement.
2. ***Apply the qualitative methods introduced here and continue developing qualitative approaches to roadway safety in reservations.*** In this project, we elaborated research methods that have not previously been utilized to study sources of roadway safety risk in reservations. These qualitative methods provide a valuable complement to equally important and more commonplace approaches of performing statistical and geospatial analysis of crash data.

Qualitative methods are especially well-suited to analyzing people's perceptions, values, and preferences, which are essential kinds of data for understanding how people interpret and respond to risk and thus for mobilizing positive behavioral and organizational changes to improve safety. In addition, through emphasizing the perspectives of people with the most direct, informed knowledge of reservation conditions, these methods begin to address the ethical, empirical, and methodological problem that there is a paucity of American Indian scholars' voices and community voices in prior research about roadway safety issues in reservations.

3. ***Expand research on emergency management systems (EMS), because inadequate EMS response is a priority concern of people with the greatest knowledge and interest in roadway safety on reservations.*** Analysis of the national survey of tribes, performed toward the end of this study, found that 18% of the 150 tribal government respondents identified "slow emergency response time" when asked to name the top three sources of roadway safety risk on their reservations. The California Tribal Road Safety Data Project has gathered similar data (Ragland, 2016). Emergency response barriers *may* include condition of the roadway, access and connectivity to remote areas, long travel times to trauma centers, and poor address and mapping data for emergency dispatch (Miller & Killia, 2017). Case study data in this project is not well developed on the topic of EMS, but the existing data imply that the presence of Indian Health Service (IHS) facilities on the reservation and coordination among EMS agencies may improve responses.

However, no systematic research has been done to identify what the EMS problem is. To identify EMS issues and inform effective interventions, additional research combining geospatial analysis, MVC data, and qualitative methods is needed. Therefore, the authors of this report are now launching a new study on this topic. In 2018, we will issue a national survey of tribal governments and other entities involved in EMS response in reservations, followed up with a set of interviews (clustering 4-5 different entities each in 4-5 regions of the country) to triangulate different organizational perspectives on the nature of the EMS response problem and possible solutions.

5.7 SUMMARY OF KEY CONCERNS AND RECOMMENDATIONS

1. ***The data from all sources are unequivocal that pedestrian safety is a critical, distinctive, and under-recognized priority in reservations.*** Pedestrian safety was the most frequently named concern in all case study data, while "inadequate pedestrian facilities" was the fourth most frequently identified concern – among over a dozen possibilities – by the 150 tribal government respondents to the national survey. Furthermore, pedestrian safety was consistently named as the single most distinctive feature of roadway safety in reservations, relative to rural areas more generally. This is a novel and important finding of this study; there has been relatively little prior research indicating this is a particular concern. Infrastructure investment, signage, enforcement, and education to protect pedestrians in reservations is extremely important (Chapter 5.1).

2. **Road engineering and repair need sustained resources.** The national survey data indicate that road quality engineering and repair are high priorities for both tribes and states, indicating the continuing importance of federal and state programs to fund this work. The case study data indicate that public works professionals take great pride in a high degree of quality and consistency in roadway engineering of county and state roads, regardless of location, which is positive for both safety and equity (Chapter 5.2).
3. **Impaired driving must not be assumed to be “the” explanation.** The case study and national survey data strongly confirm that enforcement and education to reduce reckless driving are high priorities. The case study data strongly indicate great concern about driving while distracted by texts and other cell phone use. They also challenge common assumptions about drinking and driving or drug use as an explanation for American Indian mortality rates (Chapter 5.3).
4. **Education and enforcement to increase seatbelt use are essential.** The national survey of tribes confirms that improving seatbelt and car seat use is a high priority. Positive examples from the case studies reinforce the importance of having a steady, familiar, trusted person or group work persistently on these issues on the reservation (Chapter 5.4).
5. **Tribes need better cooperation with local, state, and federal agencies.** Two needs in particular stand out: 1) Addressing mismatched perceptions of ground conditions through improved data quality and sharing and an expansion of knowledge sources; and 2) improving coordination for resource sharing, planning, and implementation, especially for infrastructure and enforcement (Chapter 5.5).
6. **Further research is needed** to improve reservation roadway safety, particularly to evaluate roadway safety implementation in reservations with tribes; advance qualitative methods and expand qualitative data sources; and assess emergency response quality in reservations (Chapter 5.6).

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APPENDIX A

KEY STAKEHOLDERS TO CONSULT ON SAFETY CONCERNS AND PRIORITIES

Typology of Key Stakeholders to consult on safety concerns and priorities. This is an ideal typology, which is not always implemented due to partners' preferences or time constraints. The case studies in this research project are shown as an illustration.

	<i>Red Lake</i>	<i>Fond du Lac</i>	<i>Mille Lacs</i>	<i>Leech Lake</i>
1. Interested reservation residents	Yes (n=76)	Yes (n=30)	Yes (n= 89)	Yes (n= 25)
2. Road & Safety Experts				
Road Construction and Maintenance	X	X	X	X
Planning Department	X	X	X	X
Police Department (chief, highway safety officer)	X	X	X	X
Car Seat & Injury Prevention leaders	X	X		X
EMS and Emergency Room		X		X
Executive Director and/or Tribal Council member	X	X		
Drivers' education teachers				
3. Expert drivers				
Transit service	X	X		X
Propane delivery		X		
School bus drivers	X	X		X
Road/snow crews	X	X		
Casino shuttle drivers				X
Home health care/visiting nurses			X	
4. Related Jurisdictions				
County public works department	X	X		X
City engineer	NA	X		NA
MNDOT regional staff	X	X	X	X
County sheriff	X	X	X	X
US Forest Service	NA	NA	NA	X
5. Centers of Activity				
Casino		X		X
Schools	X	X		X
Other community centers	X	X	X	

APPENDIX B

INTERVIEW PROTOCOL

Questions for Interviews with Key Stakeholders, including script (list of questions) and tips for the interviewer. This is for use with transportation, safety, injury prevention, and emergency medical service professionals. Estimated time: 40-75 minutes

Question or script	Purpose/notes
Introduction	
Thanks for making the time! Ice-breaker (for example, make connection w/previous interactions or w/network that provided introduction).	Purpose: Warm-up Interview tip: <ul style="list-style-type: none"> Address questions and concerns regarding interview, confidentiality, etc.
General background on participant's role/agency	
What is your affiliation and current role? How is your agency/your role related to reservation roadway safety?	Purpose: Gather context of their comments and ideas Interview tip: <ul style="list-style-type: none"> It is not important to go into a lot of depth here. It is good to move through this fairly quickly.
Nature/extent of roadway safety risk	
How would you describe roadway safety issues on the reservation? <i>Either:</i> For example, is roadway safety a problem? If so, how big of a problem is it? <i>Or:</i> You work on a lot of issues. How important is roadway safety, among all of those areas? I am not asking because I am going to judge you or try to talk you into making it more important. I am asking so that I understand the whole context of what you work in, to be sure I am not over-estimating the importance of this issue.	Purpose: Gather their expertise and point of view on safety risks. Interviewing tips: <ul style="list-style-type: none"> These are open-ended questions. Do not lead! An example of leading would be, "So this is not really a big deal here, right?" A better option would be, "Would you say this is a big problem, or not really?" If you are hearing very general statements, ask them "What are the signs that you see of that problem?" Listen for different ways of describing issues. Some people will share statistics, others general impressions, and other stories. All of these are important forms of information.
Hazard identification and sources	
What are the major risks or hazards for roadway safety on the reservation? We're interested in what seems to be causing the problems you have observed and in whatever concerns or other hunches you have about transportation risks that might be a problem.	Purpose: Tapping their expertise to uncover key areas that need attention and their theories about root causes. Interview tips: <ul style="list-style-type: none"> If necessary, prompt them to talk specifically about their area and experience. Discourage them from talking in generalities and redirect them to talk about what they do or observe on the reservation.

Question or script	Purpose/notes
	<ul style="list-style-type: none"> Avoid leading. It is important to get their perspectives on what the top causes are. However, once they have answered the question, follow up to explore all of the “4Es” (engineering, education & driver behavior, enforcement of highway safety, and emergency medical services). For example, say “I don’t believe I heard you mention ____.” Then stop and give them time to think, without rushing them.
Management and coordination suggestions	
<p>What are you <u>most</u> interested in doing to improve safety? Maybe you are most interested in continuing to do something that is working very well, maybe there is something you would like to get started, or maybe there is something you wish that another agency would do. We’re interested in all of those areas, depending on what seems most important to you.</p> <p>What do you wish other agencies or jurisdictions would start doing, or do more of, for you to be successful with your road safety efforts?</p>	<p>Purpose: Tapping their strategic and problem-solving wisdom. Identifying inter-jurisdictional coordination issues.</p> <p>Interview tips:</p> <ul style="list-style-type: none"> If you or they are running out of time, offer to come back to this another time. Skip ahead to wrap up questions. After they have responded, if they did not mention it, ask what would need to happen for them to accomplish their “wish list” or address those priorities. Listen for all kinds of ideas, such as: more money, better data, political support, training, stronger cooperation with other entities, etc. Also listen to what kinds of partners (real or hoped for) they mention, ex. roads department, transit providers, EMS, etc.
Wrap-up	
<p>We’re getting close to the end of our time. I really appreciate you sharing your ideas with us. I want to make sure I’ve captured what is most important to you about safety on the reservation. So, I’d like to invite you to summarize the 1 or 2 “take aways” that you want to be sure we understand from all that we’ve been discussing.</p> <p>Your perspectives are valuable. We are interested in talking with a range of people with different perspectives and useful insights. Can you suggest other people that we should contact?</p>	<p>Interview tips:</p> <ul style="list-style-type: none"> This should be quick. Ask them to summarize in 1-2 sentences, if they need help to keep it short. Get the contact information for other people, if possible. Clarify whether it is or is <i>not</i> okay to mention this person suggested it.

APPENDIX C

GUIDE TO DIALOGUES WITH EXPERT DRIVERS AND INTERESTED RESIDENTS

This is to be done with a large-scale, detailed map of the reservation road system, plus either many small, inexpensive photocopies that you can mark up with their feedback, or the use of “post-it” type stickies that you place on the map as they talk, photograph, and then remove so that the next person has a clean slate on which to comment. Plan on short conversations (approximately two to ten minutes each) with interested reservation residents. With expert drivers, it is often good to do this with more than one driver at a time (e.g., a few school bus drivers), and plan on 25-45 minutes to give them lots of time to think about and share their very detailed knowledge of the roads.

Question	Interviewing tips
1. What are your ideas or concerns about being safe on the roads on the reservation?	If they need help to get started, ask this all as a set and then let them choose the priorities. Are there places where you often see pedestrians or bicyclists? Deer on the road? Dangerous curves? Icy spots? Speeding?
2. What do you think about the conditions of the roads that you frequent on the reservation?	Important note: The map is just a conversation starter! It is also an easy way to record information about hotspots. However, do not worry about turning all of the input into a spatially specific idea. For example, if a person says, “We need Kids at Play signs in all of the residential areas, because kids play in the street a lot,” or “I don’t see enough police out to enforce speeding,” that is useful, general input. Even if your expertise tells you that street lighting would be better than a “Kids at Play” sign, for example, this is important as a suggestion that something needs to be done to protect children on the street.
3. What would you tell someone who is not from here, or a young person who is biking to school or just learning to drive, about being safe on the roads?	
4. Are there places or times that you avoid traveling on the roads, or if you have to go you really don’t like to, or you take a lot of extra care? Where and when? Why?	



SEARCH, The National Consortium for Justice Information and Statistics

Sharing Criminal Record Information Among New Mexico Tribes and State

By Linda B. Townsdin and
Ada Pecos Melton

The State of New Mexico and three Indian nations, the Pueblos of Acoma, Laguna and Zuni, have embarked on a ground-breaking effort to improve criminal record information sharing across tribal, state and federal jurisdictions. This effort has the potential to be mutually beneficial to the sovereign tribes, the state and the federal government, and is attracting attention as an important case study that deals with complex philosophical, policy and technical data sharing issues involving traditional justice systems and tribal sovereignty.

The American justice system was designed in an era when individual agencies and jurisdictions relied primarily on their own information to solve crimes within their boundaries. During the past 20 years that has changed significantly—due, in part, to rapid technological advances—to encourage sharing information with other jurisdictions. Tribal justice traditionally has been handled within the boundaries of the reservation according to tribal consensus and federal agreements.

Today, justice organizations are searching for common ground to share information across *all* boundaries, because criminal offenders routinely move from one jurisdiction to another, often crossing state lines. Overcoming obstacles to sharing information has a major impact on the safety of all Americans. However, political, operational and technical challenges make the noble goal of information sharing one that is complex and fraught with difficulty for tribes, states and local jurisdictions across the country.¹

The New Mexico tribal-state collaboration effort could become a model for data sharing in Indian Country nationwide. It demonstrates a way to both retain tribal sovereignty and improve data sharing across jurisdictions through forging new partnerships with the common goal of improving public safety.

Catalyst for Change

Unfortunately, just as in many other instances, it often takes a tragic incident to jump-start change and improvement in the justice system, and that is what happened to put New Mexico in the spotlight. On January 25, 2002, a Bureau of Indian Affairs (BIA) employee, Lloyd Larson, while intoxicated and driving the wrong way on an interstate highway on the Laguna Pueblo Indian Reservation in New Mexico, crashed into a car and killed two couples who were traveling back to their homes in Nebraska. The two families of the decedents sued the BIA, claiming that the agency was negligent when it was reported that Larson had nine prior arrests for drunk driving, although the BIA was not aware of many of them.

This heavily publicized drunk-driving case was the catalyst for new legislation and the formation of the New Mexico Pueblo Crime Data Project to address tribal policy and other issues related to information sharing among the tribes of New Mexico, the state and the federal government. The lack of information sharing between the tribes, state criminal justice agencies and licensing bureaus was the crux of the problem. For example:

- The New Mexico Motor Vehicle Division (MVD) did not have records of Larson's arrests or convictions because many of them occurred on tribal lands.
- The New Mexico MVD keeps track of all traffic citations and convictions, including driving while intoxicated (DWI) convictions. However, not all state law enforcement agencies report citations and not all state or municipal courts report convictions.
- MVD records are not sufficient in court to prove prior convictions. Prosecutors must produce the actual court document with a judge's signature. Old court documents sometimes prove impossible to find or are incomplete.²

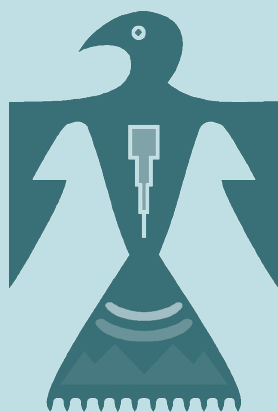
These are only a few of the challenges facing the tribes and state officials in New Mexico as they move toward finding a solution to the problems in sharing critical justice data.

Tribal Justice Terminology

Customary Law—often unwritten, derived from custom or long-established practice that has acquired the force of law by common adoption or acquiescence; it does not vary.^a

Tribal Law—based on the values, mores and norms of a tribe; in some cases it becomes case law.^b

Written or Law and Order Code—The Indian Reorganization Act of 1934 encouraged tribes to enact their own laws and establish their own justice systems.



New Legislation

A positive step toward improving data sharing was the introduction of legislation focused on justice data exchange. HB 278 allows the New Mexico MVD to exchange DWI conviction information with Indian tribes.³ This amendment to the State Motor Vehicle Code was signed into law on April 7, 2003.

New Mexico Pueblo Crime Data Project Created

Another tangible step toward improving statewide crime data was the 2003 creation of the New Mexico Pueblo Crime Data Project to improve tribal crime data management, integrate justice information systems, and develop methods for crime data sharing among tribal, state and federal agencies. Three New Mexico Pueblos,⁴ along with state and federal agencies, are participating in the project, which is guided by an advisory committee of tribal, state and federal law enforcement and court representatives. It is funded by the Justice Research and Statistics Association, Tribal Justice Statistics Assistance Center, with funding from the U.S. Department of Justice's Bureau of Justice Statistics. The project is administered by American Indian Development Associates (AIDA).⁵

At this stage of the project, strategies are being designed to: 1) develop an effective crime data sharing and management policy; 2) develop appropriate data collection instruments and reporting methods; and 3) implement appropriate intergovernmental agreements between Indian tribal governments and state agencies for crime data sharing.⁶

Policy, Technical and Philosophical Roadblocks that Affect Data Sharing

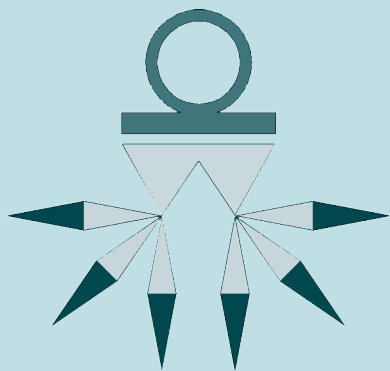
Federal-tribal relations and federal-state-tribal relations, American Indian policy and federal court decisions all affect crime data sharing in New Mexico. Project participants have addressed a number of difficult issues in their efforts to enhance intergovernmental relations and develop agreements between tribes and the state to share critical justice data.

Legal, policy, procedural and technical obstacles that must be overcome include:

- State laws and procedures regarding crime data collection, management and sharing are based on longstanding state, local and federal justice and public safety requirements, and interstate com-

What is Tribal Sovereignty?

Tribes are distinct, independent political communities with authority to exercise powers of self-government by reason of their original tribal sovereignty. The sovereign authority of tribes is recognized by both the U.S. Constitution and the New Mexico Constitution, federal treaties, federal and state legislation, federal and state judicial decisions, and administrative practice.^c



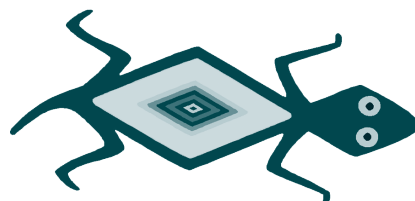
pacts. Overcoming resistance to changing existing systems to accommodate the unique circumstances related to tribal justice models will take a coordinated, collaborative effort by all federal, state, local and tribal stakeholders.

- Many tribes currently do not access criminal history information from the State Records Bureau, the FBI's National Crime Information Center or other computerized offender records.
- Changing the crime data reporting processes within the large crime data agencies and programs of the federal government to reflect specific tribal data will require time and effort.
- Sharing crime data may violate tribal values. Confidentiality protections that represent tribal requirements for data sharing must be implemented.
- The legal and technical infrastructure in many tribes is currently not in place to enable the dissemination or collection of accurate data.
- Lack of access by non-Indian jurisdictions to criminal histories of Indian offenders committing crimes on Indian lands, which hinders comprehensive investigation by off-reservation law enforcement and other justice authorities.

- Lack of access to criminal histories hinders effective prosecution of repeat offenders when they commit new offenses in other Indian and non-Indian jurisdictions.
- Lack of accurate and complete criminal histories may hamper charging and/or sentencing decisions, resulting in inappropriate outcomes for repeat offenders.
- Tribal court orders involving suspension or revocation of driving privileges may be unenforceable because the state Motor Vehicle Division does not recognize tribal court judgments. (Most tribal courts do not routinely provide DWI or other traffic information to the New Mexico MVD.)⁷
- Each of the 22 New Mexico Indian nations—19 Pueblos, two Apache Tribes and chapters of the Navajo Nation—manages its own unique justice system within each reservation. The lack of standardization is a hindrance to data sharing.
- Indian tribes lack criminal jurisdiction over non-Indians and, therefore, cannot prosecute them according to Indian law when they commit a crime on Indian lands.⁸

Philosophical challenges to be overcome center around the contrast between restorative versus retributive justice:

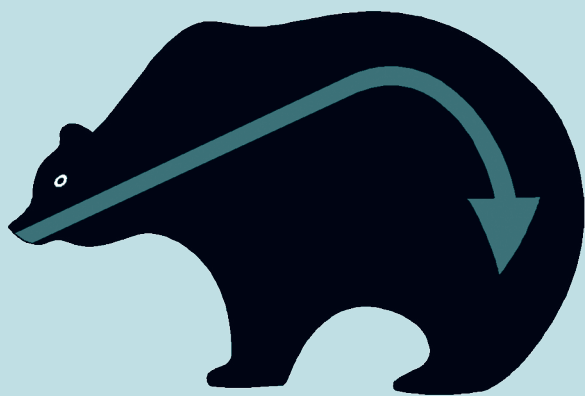
Tribal culture is traditionally restorative, with a goal of returning harmony to the tribe. The idea of sharing a formal record clashes with some tribal philosophies, which discourage disclosure of case proceedings to limit ongoing or new conflicts and to promote forgiveness and rehabilitation. “Restorative justice” can be defined in a number of ways. In general, it is a philosophical belief that crime is a violation of people and the community; violations create obligations and liabilities; and it seeks to heal and put right the wrongs.⁹ In contrast, American justice is considered to be retributive; crime is a violation of the state, and the role of justice is to punish the offender.¹⁰ This challenge and others are being addressed in efforts to honor tribal culture while improving data sharing among the jurisdictions.



Tribal restorative justice practices have had an important impact on the traditional American justice system over the past decade. The Office of Justice Programs, U.S. Department of Justice, has hosted a number of dialogues, symposia and conferences on the subject of restorative and community justice, particularly in dealing with juvenile offenders and spousal abuse cases.

Understanding Treaties

The United States government recognizes Indian tribes through treaties. The right for Indian nations to maintain their own governments has been upheld since the 1830s, when federal courts first affirmed a trust responsibility to the tribes. In the treaties, tribes ceded vast segments of their homelands in exchange for honoring their right to retain small segments of this land for tribal members. The law states that an Indian nation possesses all of the inherent powers of any sovereign government, except those that have been limited or qualified by treaties, agreements or an act of Congress.^d



Tribal Statistics

There are more than 560 federally recognized tribes and approximately 275 Indian reservations—each with its own governing structure—in the United States. The largest is the Navajo Reservation with 16 million acres throughout Arizona, New Mexico and Utah.^e

Next Steps on the Road to Improving Data Sharing and Restoring Harmony

The New Mexico Pueblo Crime Data Project is currently working to develop models, stimulate dialogue and make resources available for tribes to build their capabilities to improve crime data collection, management and sharing.¹¹ Project deliverables and activities include:

- Developing a governance strategy that best meets tribal sovereignty requirements for data sharing with state and federal justice entities.
- Developing a model process guide for developing and entering into DWI information sharing agreements between the tribes and the state.
- The Zuni, Laguna and Acoma Pueblos have conducted information technology assessments with assistance from the AIDA and SEARCH, The National Consortium for Justice Information and Statistics.¹²
- Tribal and state stakeholders will use the Justice Information Exchange Modeling (JIEM) Tool¹³ to define information exchanges that occur among justice entities within each tribe, among the three project tribes, and between the tribes, the state and the federal government.
- Defining exchange transactions and documents that conform with the Global Justice XML Data Model (GJXDM).¹⁴
- Developing a service-oriented technical architecture that best meets the unique tribal, state and federal data sharing requirements.
- Gathering information and designing a methodology for standards in *data quality* among the tribes, to ensure that the data collected and shared are accurate and timely.

A great deal of work remains. After all, most tribal justice systems under Indian control began in the 1950s and 1960s, while American jurisprudence has been in development for more than 200 years.¹⁵ Meeting the project's goals involves continuing to address overall concerns for data collection, management and sharing, as well as specific state, tribal and federal concerns.

About the authors: Linda B. Townsdin is a Writer/Editor with SEARCH. Ada Pecos Melton is President of American Indian Development Associates.

Endnotes

¹ See Lawrence P. Webster, “Roadmap for Integrated Justice: A Guide for Planning and Management,” in *Information Systems Integration: A Library of SEARCH Resources for Justice and Public Safety Practitioners* (Sacramento, CA: SEARCH Group, Inc., 2004). Available at <http://www.search.org/files/pdf/IntegrationLibrary.pdf>.

² Information prepared by American Indian Development Associates.

³ For more information about this legislation, see http://legis.state.nm.us/newsite/_session.asp?chamber=H&type=++&number=278&year=03.

⁴ There are 19 Pueblos located in the Central, Northern and Western parts of New Mexico. They include the Zuni, Acoma and Laguna Pueblos, which are located in western New Mexico.

⁵ AIDA is an Indian-owned technical assistance, training and research firm based in Albuquerque and founded in 1989. See <http://www.aidainc.net/>.

⁶ Ada Pecos Melton, *Information Sharing in Indian Country: The New Mexico Experience*, a presentation at the 2004 Symposium on Integrated Justice information Systems: Supporting the Homeland, March 24, 2004, Washington, D.C. Available at <http://www.search.org/conferences/2004symposium/agenda/presentations.asp>.

⁷ American Indian Development Associates, *The New Mexico Crime Data Project Technical Assistance Report* (Albuquerque: March 2004).

⁸ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

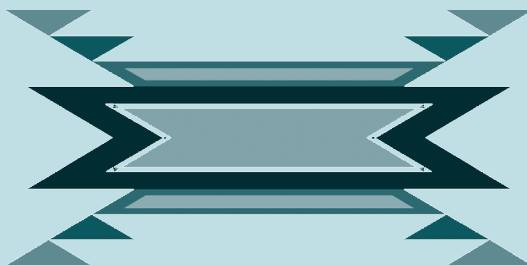
⁹ Howard Zehr, Harry Mika, *Fundamental Concepts of Restorative Justice* (Akron, PA: Mennonite Central Committee, 1997) available at <http://www.ojp.usdoj.gov/nij/rest-just/ch1/fundamental.html>.

¹⁰ See “Restorative Justice On-line Notebook,” U.S. Department of Justice, National Institute of Justice, available at <http://www.ojp.usdoj.gov/nij/rest-just/>.

Tribal Court Models

Each tribe handles disputes in its own unique way. Many Pueblos do not have a “separation of powers” structure. They may include modified bureaucracies, often combining executive, legislative and judiciary functions. Combinations of family and community forums, traditional courts, quasi-modern courts and modern tribal courts are used, including:

- **American Model**—adoption of the American legal process.
- **Hybrid American Model**—largest group, serving populations of traditional and non-traditional people.
- **Dual Model**—employs a traditional and an American justice system model, but keeps a clear separation between them. Cases are diverted based upon subject matter to the different courts. The most notable of this class is the Navajo Nation Court. Many Pueblo courts have two court systems, although they have created an American model court to handle an increasing number of commercial claims.
- The traditional model court is rare. Several Pueblos continue to solve problems using age-old practices. Many do not allow non-Indian practitioners to participate in the deliberative process, which has brought criticism.^f



Endnotes, continued

¹¹ American Indian Development Associates, *supra* note 7.

¹² SEARCH provides onsite, no-cost assistance to tribal, state and local jurisdictions in planning for and implementing automated and integrated information systems. The assistance is funded by the U.S. Department of Justice, Bureau of Justice Assistance. See <http://www.search.org/programs/technology/>.

¹³ For information on the JIEM Tool, see <http://www.search.org/programs/technology/jiem.asp>.

¹⁴ For more information on the GJXDM, see http://it.ojp.gov/topic.jsp?topic_id=43.

¹⁵ Carey N. Vincenti, Chief Judge, Jicarilla Apache Tribe, "The Reemergence of Tribal Society and Traditional Justice Systems," originally published in *Judicature*, Vol. 79, No. 3, November-December 1995. Available at <http://www.ojp.usdoj.gov/nij/rest-just/ch1/reemerge.htm>.

^a Ada Pecos Melton, "Indigenous Justice Systems and Tribal Society," p. 4, citing Zuni, "Justice Based on Indigenous Concepts," a paper presented at the Indigenous Justice Conference, 1992. Melton article originally published in *Judicature*, Vol. 79, No. 3, November-December 1995. Available at <http://www.ojp.usdoj.gov/nij/rest-just/ch1/indigenous.htm>.

^b Ibid., p. 4, citing Austin, "Incorporating Tribal Customs and Traditions into Tribal Court Decisions," a paper presented at the Federal Indian Bar Association Law Conference, Albuquerque, NM, 1992.

^c Patricia Madrid, New Mexico Attorney General, "Understanding Tribal Sovereignty," available at http://www.ago.state.nm.us/cia/cia_tribalsov.htm.

^d Patricia Madrid, New Mexico Attorney General, "Treaties," available at http://www.ago.state.nm.us/cia/cia_sovtreaties.htm.

^e National Tribal Justice Resource Center, 2002. See <http://www.tribalresourcecenter.org/tribalcourts/history.asp>.

^f Vincenti, *supra* note 15.

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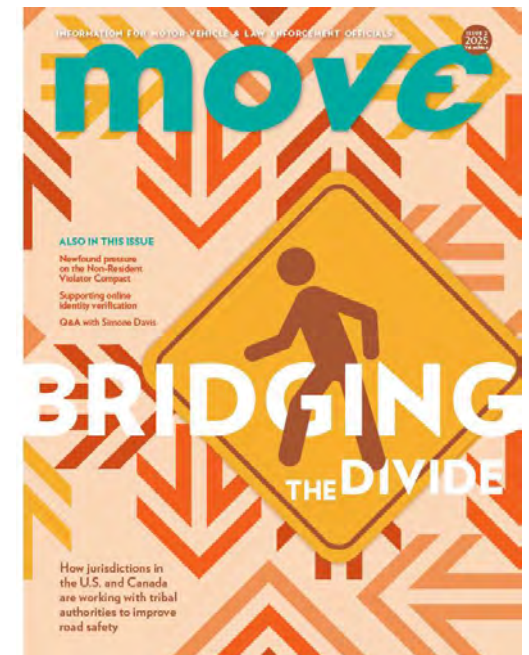


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Move Magazine

How Jurisdictions Are Working with Tribal Authorities to Improve Road Safety

IN PARTNERSHIP WITH TRIBAL AUTHORITIES, MANY JURISDICTIONS ARE HELPING TO IMPROVE ROAD SAFETY THROUGH COLLABORATIVE INITIATIVES, IMPROVED DATA-SHARING EFFORTS AND CULTURALLY SENSITIVE ENGAGEMENT.

Meredith Landry | [June 2025](#) | [2025 Issue 2](#)

There are 574 federally recognized American Indian tribes and Alaska Native Villages in the United States today, while Canada recognizes over 630 First Nations communities. Legally deemed sovereign nations, tribes in the U.S. can establish their own traffic laws, road safety measures and transportation infrastructure on tribal lands.

This serves three major purposes. First, Indigenous nations use roadway governance as an expression of self-rule and cultural preservation. Secondly, because many tribal areas are remote, local control over road systems allows for quicker response to community needs. And third, tribes can implement laws that align with their traditional practices or address unique community concerns.

Unfortunately, road safety on these lands has long been a concern. American Indian and Alaska Native people had a traffic fatality rate of 28.5 per 100,000, a rate that's more than 10 higher than any other demographic, according to the U.S. Department of Transportation. Since tribal communities also report higher-than-average crash rates, jurisdictions across North America are working toward a solution. In partnership with tribal authorities, many jurisdictions are helping to improve road safety through

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collaborative initiatives, improved data-sharing efforts and culturally sensitive engagement.

THE CHALLENGE: A DISPROPORTIONATE RISK ON TRIBAL ROADS

Across North America, tribal communities experience disproportionately high rates of traffic-related fatalities and injuries.

"When we're looking at different populations that have been overrepresented in these fatalities, sovereign nations and tribal communities far surpass any other population," says Tara Casanova Powell, CEO of the Association of Transportation Safety Information Professionals.

Many factors contribute to this heightened risk, according to Casanova Powell, including inadequate infrastructure, lack of access to emergency services and an increased presence of mixed-use roadways where pedestrians, cyclists and motor vehicles share the same space.

"When we're looking at different populations that have been overrepresented in these fatalities, sovereign nations and tribal communities far surpass any other population."

Tara Casanova Powell, CEO, Association of Transportation Safety Information Professionals

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"We analyzed collision data and found a lot of collisions occurring near First Nations," says Yadili Okwumabua-Gbakima, supervisor of Road Safety Programs, Manitoba Public Insurance, Canada. "Compared to the rest of the province, the proportion of collision fatalities in and around First Nations is substantially higher."

Alarming, she says that pedestrians made up a substantial percentage of these fatalities, often due to low visibility and limited pedestrian infrastructure.

THE COMPLEXITY OF GOVERNANCE AND DATA COLLECTION

Jurisdictions working with tribal authorities must often navigate complex governance structures. As sovereign nations, each tribe has its own set of rules.

"Every tribe's a little bit different," says Andrea Bill, associate director of the Eastern Tribal Technical Assistance Program. "It really depends on their background and whether they operate under Public Law 280 or not." (Public Law 280 gives certain states the ability to oversee jurisdiction in criminal and civil matters on tribal land.)

Some tribes maintain their own crash databases, she says, while others share data with state or federal agencies, which creates inconsistencies in the available traffic safety data.

"Some tribes have more advanced data systems and can share their data with the state or federal agencies. But there are still some tribes that don't collect data on some driving offenses on their roads," Casanova Powell says.

This inconsistency makes it difficult to assess safety risks and apply for funding to address infrastructure deficiencies.

BUILDING TRUST THROUGH COLLABORATION

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Recognizing the urgent need for improved road safety, organizations and government agencies have taken steps to build partnerships with tribal communities. A critical aspect of this work is earning the trust of tribal authorities.



"The biggest thing is listening," Bill says. "There are things that have gone back and forth for many, many years. Any idea we come up with is probably something they've already thought about and tried to do."

In her initial approach to a tribe, Casanova Powell says that she lets them do the talking.

"We ask, 'What do you need? How can we help you?' I'm not here to tell the tribes what they need—I have no idea what they need," she says. "I need them to tell me."

This approach of mutual respect and active listening has also helped open doors to cooperation across Canada.

"One of the big things that I can say is that we are really trying to look at how we can serve all Manitobans—including First Nations citizens," Okwumabua-Gbakima says. "Historically, Indigenous communities have been underserved, if served at all."

INITIATIVES DRIVING CHANGE

Over the last decade, various programs have emerged to improve road safety in tribal areas. In Wisconsin, Bill's team worked to integrate tribal crash data into a statewide mapping system.

"We built trust step by step," she says. "Eventually, we got to a place where our crashes are almost all geolocated—over 90% are mapped correctly. Now, tribes can use this data to apply for funding."

In Manitoba, Okwumabua-Gbakima says that a focus on community engagement has led to some targeted safety interventions.

"Following a review of collision data and discussions with stakeholders, we found that a lot of First Nations youth were using off-road vehicles as their primary mode of transportation," she says. "We recognized the need to partner with First Nations and Indigenous communities in ensuring youth had access to ATV and snowmobile education and safety equipment. This initiative is allowing us to support educational presentations and distribute safety helmets to children attending the sessions."

Another successful initiative in Manitoba involved distributing high-visibility gear to pedestrians in Indigenous communities, including reflective backpacks.

"We piloted a program at Manitoba Public Insurance, in collaboration with local First Nations, where we provided 1,300 kits that included backpacks, flashing lights and warm toques [beanies], all designed for high visibility. The response was overwhelmingly positive," Okwumabua-Gbakima says. "People appreciated that their safety was being considered and prioritized."

OVERCOMING BARRIERS TO PROGRESS

Despite these advancements, several hurdles remain. One of the main challenges is the reluctance of some tribes to share crash data, often due to concerns over jurisdictional overreach.

"Some grants that tribes can apply for require them to share their data," Casanova Powell says. "However, as sovereign nations, they are not required to do so outside of grant requirements. We've made it clear that we are not asking them to share anything they

don't want to. Our goal is simply to help them collect the right data so they can make informed decisions."

"A lot of these roads aren't paved, and maintenance funding is minimal. That's why access to accurate data is so critical—it helps justify the need for funding."

Andrea Bill, Associate Director, Eastern Tribal Technical Assistance Program

Funding constraints are another persistent issue: Many tribal communities lack the resources to maintain roadways or implement safety measures.

"A lot of these roads aren't paved, and maintenance funding is minimal," Bill says. "That's why access to accurate data is so critical—it helps justify the need for funding."

THE PATH FORWARD

Looking ahead, Okwumabua-Gbakima, Bill and Casanova Powell all hope to expand their current initiatives and continue strengthening partnerships with tribal authorities.

"We need to keep showing up. When communicating with tribes, I let them know, 'We're here for you. We'll be back.' It's about building relationships, not just checking a box," Casanova Powell says.

The ultimate goal for Bill is a holistic approach to road safety that transcends jurisdictional boundaries.

"In an ideal world, we'd focus on risk factors rather than road ownership," she says. "We need to stop seeing boundaries as barriers and instead look at how we can make all roads safer—no matter who maintains them."


Similarly, Okwumabua-Gbakima sees continued community engagement as essential.

"We're hoping to expand our outreach, bring more voices to the table and co-create solutions that make sense for Indigenous communities," she says.

By working closely with tribal authorities, jurisdictions in the U.S. and Canada are taking meaningful steps toward reducing traffic fatalities and making roads safer for everyone. But there is still a lot to learn.

"We still have a long way to go," Okwumabua-Gbakima says. "But we're listening, working in collaboration with communities and doing our best to make the roads safer for everyone."

Hear more about working with tribal authorities on roadway safety in **AAMAcast 200**.








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Safe drivers
Safe vehicles
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Saving lives!






AAMVAcast

Episode 267 - Update AAMVA Card Design St...

PodBean



▶ Episode 267 - Update AAMVA Card Design Standard	July 7, 2025	35:15	
▶ Episode 266 - Michigan's Road to Restoration Clinics	June 30, 2025	25:00	
▶ Episode 265 - NJMVC Temp Tag Fraud Prevention	June 23, 2025	31:41	
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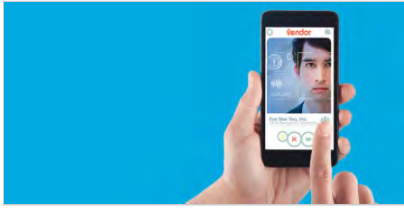
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Civil and Small Claims – Limitations on the Scope of the Tribal Court Civil Money Judgement Act and Issues of Comity

Hon. Michele Fahley, Chief Judge of the Pala Band of Mission Indians Tribal Court

Hon. Devon Lomayesva, Judge of the Superior Court of California, County of San Diego



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CODE OF CIVIL PROCEDURE - CCP

PART 3. OF SPECIAL PROCEEDINGS OF A CIVIL NATURE [1063 - 1822.60] (*Part 3 enacted 1872.*)

TITLE 11. MONEY JUDGMENTS OF OTHER JURISDICTIONS [1710.10 - 1741] (*Heading of Title 11 amended by Stats. 2017, Ch. 168, Sec. 1.*)

CHAPTER 3. Tribal Court Civil Money Judgment Act [1730 - 1741] (*Chapter 3 heading added by Stats. 2017, Ch. 168, Sec. 9.*)

1730. This chapter shall be known and may be cited as the Tribal Court Civil Money Judgment Act.
(*Amended by Stats. 2017, Ch. 168, Sec. 10. (AB 905) Effective January 1, 2018.*)

1731. (a) This chapter governs the procedures by which the superior courts of the State of California recognize and enter tribal court money judgments of any federally recognized Indian tribe. Determinations regarding recognition and entry of a tribal court money judgment pursuant to state law shall have no effect upon the independent authority of that judgment. To the extent not inconsistent with this chapter, the Code of Civil Procedure shall apply.

(b) This chapter does not apply to any of the following tribal court money judgments:

(1) For taxes, fines, or other penalties, except for tribal taxes as described in clause 3 of subparagraph (B) of paragraph (3) of subdivision (d) of Section 1616 of Article 10 of Chapter 4 of Division 2 of Title 18 of the California Code of Regulations, and related interest or penalties.

(2) For which federal law requires that states grant full faith and credit recognition, including child support orders under the Full Faith and Credit for Child Support Orders Act (28 U.S.C. Sec. 1738B), except for the purposes of recognizing a tribal court order establishing the right of a child or other dependent of a participant in a retirement plan or other plan of deferred compensation to an assignment of all or a portion of the benefits payable.

(3) For which state law provides for recognition, including child support orders recognized under the Uniform Child Custody Jurisdiction and Enforcement Act (Part 3 (commencing with Section 3400) of Division 8 of the Family Code), other forms of family support orders under the Uniform Interstate Family Support Act (Part 6 (commencing with Section 5700.101) of Division 9 of the Family Code), except for the purposes of recognizing a tribal court order establishing the right of a spouse, former spouse, child, or other dependent of a participant in a retirement plan or other plan of deferred compensation to an assignment of all or a portion of the benefits payable.

(4) For decedents' estates, guardianships, conservatorships, internal affairs of trusts, powers of attorney, or other tribal court money judgments that arise in proceedings that are or would be governed by the Probate Code.

(c) Nothing in this chapter shall be deemed or construed to expand or limit the jurisdiction of either the state or any Indian tribe.

(Amended by Stats. 2023, Ch. 138, Sec. 1. (AB 1139) Effective January 1, 2024.)

1732. For purposes of this chapter:

(a) "Applicant" means the person or persons who can bring an action to enforce a tribal court money judgment.

(b) "Civil action or proceeding" means any action or proceeding that is not criminal, except for those actions or proceedings expressly excluded by subdivision (b) of Section 1731.

(c) "Due process" includes, but is not limited to, the right to be represented by legal counsel, to receive reasonable notice and an opportunity for a hearing, to call and cross-examine witnesses, and to present evidence and argument to an impartial decisionmaker.

(d) "Good cause" means a substantial reason, taking into account the prejudice or irreparable harm a party will suffer if a hearing is not held on an objection or not held within the time periods established by this chapter.

(e) "Respondent" means the person or persons against whom an action to enforce a tribal court money judgment can be brought.

(f) "Tribal court" means any court or other tribunal of any federally recognized Indian nation, tribe, pueblo, band, or Alaska Native village, duly established under tribal or federal law, including Courts of Indian Offenses organized pursuant to Part 11 of Title 25 of the Code of Federal Regulations.

(g) "Tribal court money judgment" means any written judgment, decree, or order of a tribal court for a specified amount of money that was issued in a civil action or proceeding that is final, conclusive, and enforceable by the tribal court in which it was issued and is duly authenticated in accordance with the laws and procedures of the tribe or tribal court.

(Amended by Stats. 2017, Ch. 168, Sec. 12. (AB 905) Effective January 1, 2018.)

1733. (a) An application for entry of a judgment under this chapter shall be filed in a superior court.

(b) Subject to the power of the court to transfer proceedings under this chapter pursuant to Title 4 (commencing with Section 392) of Part 2, and except as provided in Section 1733.1, the proper county for the filing of an application is either of the following:

(1) The county in which any respondent resides or owns property.

(2) If no respondent is a resident, any county in this state.

(c) A case in which the tribal court money judgment amounts to thirty-five thousand dollars (\$35,000) or less is a limited civil case.

(Amended by Stats. 2023, Ch. 861, Sec. 8. (SB 71) Effective January 1, 2024.)

1733.1. (a) (1) If the parties to the underlying tribal court proceeding agree, the parties may file a joint application for the recognition of a tribal court order that establishes a right to child support, spousal support payments, or marital property rights to such spouse, former spouse, child, or other dependent of a participant in a retirement plan or other plan of deferred compensation, which order assigns all or a portion of the benefits payable with respect to the participant to an alternate payee.

(2) If one of the parties to a tribal court order described in paragraph (1) does not agree to join in the application, the other party may proceed by having the tribal court execute a certificate in lieu of the signature of the other party. The Judicial Council shall adopt a format for the certificate.

(3) The application shall be on a form adopted by the Judicial Council, executed under penalty of perjury by parties to the proceeding submitting the application. 267

(4) The application shall include the name, current address, telephone number, and email address of each party, the name and mailing address of the issuing tribal court, and a certified copy of the order to be recognized.

(b) The filing fee for an application filed under this section is one hundred dollars (\$100).

(c) An application filed pursuant to this section may be filed in the county in which either one of the parties resides.

(d) Entry of the tribal court order under this section does not confer any jurisdiction on a court of this state to modify or enforce the tribal court order.

(Amended by Stats. 2022, Ch. 420, Sec. 14. (AB 2960) Effective January 1, 2023.)

1734. (a) An applicant may apply for recognition and entry of a judgment based on a tribal court money judgment by filing an application in superior court pursuant to Section 1733.

(b) The application shall be executed under penalty of perjury and include all of the following information:

(1) The name and address of the tribal court that issued the judgment to be enforced and the date of the tribal court money judgment or any renewal thereof.

(2) The name and address of the party seeking recognition.

(3) (A) Any of the following statements, as applicable:

(i) If the respondent is an individual, the name and last known residence address of the respondent.

(ii) If the respondent is a corporation, the corporation's name, place of incorporation, and whether the corporation, if foreign, has qualified to do business in this state under the provisions of Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.

(iii) If the respondent is a partnership, the name of the partnership, whether it is a foreign partnership, and if it is a foreign partnership, whether it has filed a statement pursuant to Section 15800 of the Corporations Code designating an agent for service of process.

(iv) If the respondent is a limited liability company, the company's name, whether it is a foreign company, and if so, whether it has filed a statement pursuant to Section 17060 of the Corporations Code.

(B) Except for facts that are matters of public record in this state, the statements required by this paragraph may be made on the basis of the applicant's information and belief.

(4) A statement that an action in this state to enforce the tribal court money judgment is not barred by the applicable statute of limitations.

(5) A statement, based on the applicant's information and belief, that the tribal court money judgment is final and that no stay of enforcement of the tribal court money judgment is currently in effect.

(6) A statement that includes all of the following:

(A) The amount of the award granted in the tribal court money judgment that remains unpaid.

(B) If accrued interest on the tribal court money judgment is to be included in the California judgment, the amount of interest accrued on the tribal court money judgment, computed at the rate of interest applicable to the judgment under the law of the tribal jurisdiction in which the tribal court money judgment was issued.

(C) The rate of interest applicable to the money judgment under the law of the jurisdiction in which the tribal court money judgment was issued.

(D) A citation to the supporting authority.

(7) A statement that no action based on the tribal court money judgment is currently pending in any state court and that no judgment based on the tribal court money judgment has previously been entered in any proceeding in this state.

(c) All of the following items shall be attached to the application:

(1) An authenticated copy of the tribal court money judgment, certified by the judge or clerk of the tribal court.

(2) A copy of the tribal court rules of procedure pursuant to which the tribal court money judgment was entered.

(3) A declaration under penalty of perjury by the tribal court clerk, applicant, or applicant's attorney stating, based on personal knowledge, that the case that resulted in the entry of the judgment was conducted in compliance with the tribal court's rules of procedure.

(Added by Stats. 2014, Ch. 243, Sec. 4. (SB 406) Effective January 1, 2015.)

1735. (a) Promptly upon the filing of an application pursuant to Section 1734, the applicant shall serve upon the respondent a notice of filing of the application to recognize and enter the tribal court money judgment, together with a copy of the application and any documents filed with the application. The notice of filing shall be in a form that shall be prescribed by the Judicial Council, and shall inform the respondent that the respondent has 30 days from service of the notice of filing to file objections to the enforcement of the tribal court money judgment. The notice shall include the name and address of the applicant and the applicant's attorney, if any, and the text of Sections 1736 and 1737.

(b) Except as provided in subdivision (c), service shall be made in the manner provided for service of summons by Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2.

(c) If a respondent is the State of California or any of its officers, employees, departments, agencies, boards, or commissions, service of the notice of filing on that respondent may be by mail to the office of the Attorney General.

(d) The fee for service of the notice of filing under this section is an item of costs recoverable in the same manner as statutory fees for service of a writ as provided in Chapter 5 (commencing with Section 685.010) of Division 1 of Title 9 of Part 2, but the recoverable amount for that fee shall not exceed the amount allowed to a public officer or employee of this state for that service.

(e) The applicant shall file a proof of service of the notice promptly following service.

(Amended by Stats. 2021, Ch. 58, Sec. 4. (AB 627) Effective January 1, 2022.)

1736. (a) If no objections are timely filed in accordance with Section 1737, the clerk shall certify that no objections were timely filed, and a judgment shall be entered.

(b) The judgment entered by the superior court shall be based on and contain the provisions and terms of the tribal court money judgment. The judgment shall be entered in the same manner, have the same effect, and be enforceable in the same manner as any civil judgment, order, or decree of a court of this state, except as provided in Section 1733.1.

(Amended by Stats. 2021, Ch. 58, Sec. 5. (AB 627) Effective January 1, 2022.)

1737. (a) Any objection to the recognition and entry of the tribal court money judgment sought under Section 1734 shall be served and filed within 30 days of service of the notice of filing. If any objection is filed within this time period, the superior court shall set a time period for replies and set the matter for a hearing. The hearing shall be held by the superior court within 45 days from the date the objection is filed unless good cause exists for a later

hearing. The only grounds for objecting to the recognition or enforcement of a tribal court money judgment are the grounds set forth in subdivisions (b), (c), and (d).

(b) A tribal court money judgment shall not be recognized and entered if the respondent demonstrates to the superior court that at least one of the following occurred:

(1) The tribal court did not have personal jurisdiction over the respondent.

(2) The tribal court did not have jurisdiction over the subject matter.

(3) The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law.

(c) (1) The superior court shall decline to recognize and enter a tribal court money judgment if any one of the following grounds applies:

(A) The defendant in the proceeding in the tribal court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.

(B) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.

(C) The judgment or the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of the state or of the United States.

(D) The proceeding in the tribal court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that tribal court.

(E) In the case of jurisdiction based on personal service only, the tribal court was a seriously inconvenient forum for the trial of the action.

(F) The judgment was rendered under circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

(G) The specific proceeding in the tribal court leading to the judgment was not compatible with the requirements of due process of law.

(H) The judgment includes recovery for a claim of defamation, unless the court determines that the defamation law applied by the tribal court provided at least as much protection for freedom of speech and the

press as provided by both the United States and California Constitutions.

(2) Notwithstanding an applicable ground for nonrecognition under paragraph (1), the court may nonetheless recognize a tribal court money judgment if the applicant demonstrates good reason to recognize the judgment that outweighs the ground for nonrecognition.

(d) The superior court may, in its discretion, decline to recognize and enter a tribal court money judgment if the judgment conflicts with another final and conclusive judgment.

(e) If objections have been timely filed, the applicant has the burden of establishing that the tribal court money judgment is entitled to recognition. If the applicant has met its burden, a party resisting recognition of the tribal court money judgment has the burden of establishing that a ground for nonrecognition exists pursuant to subdivision (b), (c), or (d).

(Amended by Stats. 2021, Ch. 58, Sec. 6. (AB 627) Effective January 1, 2022.)

1738. The superior court shall grant a stay of enforcement if the respondent establishes one of the following to the superior court:

(a) An appeal from the tribal court money judgment is pending or may be taken in the tribal court, in which case the superior court shall stay state execution of the tribal court money judgment until the proceeding on appeal has been concluded or the time for appeal has expired.

(b) A stay of enforcement of the tribal court money judgment has been granted by the tribal court, in which case the superior court shall stay enforcement of the tribal court money judgment until the stay of execution expires or is vacated.

(c) Any other circumstance exists where the interests of justice require a stay of enforcement.

(Added by Stats. 2014, Ch. 243, Sec. 4. (SB 406) Effective January 1, 2015.)

1739. An action to recognize a tribal court money judgment or any renewal thereof shall be commenced within the earlier of the following periods:

(a) The time during which the tribal court money judgment is effective within the territorial jurisdiction of the tribal court.

(b) Ten years from the date that the tribal court money judgment became effective in the tribal jurisdiction.

(Added by Stats. 2014, Ch. 243, Sec. 4. (SB 406) Effective January 1, 2015.)

1740. (a) The superior court may, after notice to all parties, attempt to resolve any issues raised regarding a tribal court money judgment by contacting the tribal court judge who issued the judgment.

(b) The superior court shall allow the parties to participate in, and shall prepare a record of, any communication made with the tribal court judge pursuant to this section.

(Added by Stats. 2014, Ch. 243, Sec. 4. (SB 406) Effective January 1, 2015.)

1741. (a) The Uniform Foreign-Country Money Judgments Recognition Act (Chapter 2 (commencing with Section 1713)) applies to all actions commenced in superior court before January 1, 2015, in which the issue of recognition of a tribal court money judgment is raised.

(b) This chapter applies to all actions to enforce tribal court money judgments as defined herein commenced in superior court on or after January 1, 2015. A judgment entered under this chapter shall not limit the right of a party to seek enforcement of any part of a judgment, order, or decree entered by a tribal court that is not encompassed by the judgment entered under this chapter.

(Amended by Stats. 2017, Ch. 168, Sec. 15. (AB 905) Effective January 1, 2018.)

ATTORNEY OR PARTY WITHOUT ATTORNEY: _____ STATE BAR NO: _____ NAME: _____ FIRM NAME: _____ STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____ TELEPHONE NO.: _____ FAX NO.: _____ E-MAIL ADDRESS: _____ ATTORNEY FOR (name/address): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
APPLICANT: _____ RESPONDENT: _____	
NOTICE OF APPLICATION FOR RECOGNITION AND ENTRY OF TRIBAL COURT MONEY JUDGMENT	CASE NUMBER: _____

NOTICE: An application has been filed for this court to recognize and enter a tribal court money judgment against you. A copy of the application, **including a copy of the tribal court money judgment**, is being served with this notice. **Unless you file objections with the superior court named above within 30 days after service of this notice, the court will enter that judgment against you.**

Entry of Judgment. (a) If no objections are timely filed in accordance with the provisions below (and set forth in Code of Civil Procedure section 1737), the clerk shall certify that no objections were timely filed, and a judgment shall be entered.

(b) The judgment entered by the superior court shall be based on and contain the provisions and terms of the tribal court money judgment. The judgment shall be entered in the same manner, have the same effect, and be enforceable in the same manner as any civil judgment, order, or decree of a court of this state.

How to Object: (a) **Any objection** to the recognition and entry of the tribal court money judgment **shall be served and filed within 30 days of service of the notice of filing**. If any objection is filed within this time period, the superior court shall set a time period for replies and set the matter for a hearing. The hearing shall be held by the superior court within 45 days from the date the objection is filed unless good cause exists for a later hearing. The only grounds for objecting to the recognition or enforcement of a tribal court money judgment are the grounds set forth in subdivisions (b) and (c).

(b) A tribal court money judgment shall not be recognized and entered if the respondent demonstrates to the superior court that at least one of the following occurred: (1) The tribal court did not have personal jurisdiction over the respondent. (2) The tribal court did not have jurisdiction over the subject matter. (3) The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law.

(c) The superior court may, in its discretion, decline to recognize and enter a tribal court money judgment on any one of the following grounds: (1) The defendant in the proceeding in the tribal court did not receive notice of the proceeding in sufficient time to enable the defendant to defend. (2) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case. (3) The judgment or the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of the state or of the United States. (4) The judgment conflicts with another final and conclusive judgment. (5) The proceeding in the tribal court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that tribal court. (6) In the case of jurisdiction based on personal service only, the tribal court was a seriously inconvenient forum for the trial of the action. (7) The judgment was rendered under circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment. (8) The specific proceeding in the tribal court leading to the judgment was not compatible with the requirements of due process of law. (9) The judgment includes recovery for a claim of defamation, unless the court determines that the defamation law applied by the tribal court provided at least as much protection for freedom of speech and the press as provided by both the United States and California Constitutions.

(d) If objections have been timely filed, the applicant has the burden of establishing that the tribal court money judgment is entitled to recognition. If the applicant has met its burden, a party resisting recognition of the tribal court money judgment has the burden of establishing that a ground for nonrecognition exists pursuant to subdivisions (b) or (c).

[SEAL]	Date: _____ Clerk, by _____, Deputy
4. <input type="checkbox"/> NOTICE TO THE PERSON SERVED: You are served	a. <input type="checkbox"/> as an individual. b. <input type="checkbox"/> under the fictitious name of (specify): _____ c. <input type="checkbox"/> on behalf of (specify): _____ Under: <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> CCP 416.10 (corporation) <input type="checkbox"/> CCP 416.20 (defunct corporation) <input type="checkbox"/> CCP 416.40 (association or partnership) <input type="checkbox"/> other: _____ </div> <div> <input type="checkbox"/> CCP 416.60 (minor) <input type="checkbox"/> CCP 416.70 (conservatee) <input type="checkbox"/> CCP 416.90 (individual) </div> </div>
(Proof of service on reverse)	

PROOF OF SERVICE

EJ-115

(Use separate proof of service for each person served.)

1. I served the *Notice of Application for Recognition and Entry of Tribal Court Money Judgment* and the application with all attachments as follows:

- a. on respondent (*name*):
b. by serving ☐ judgment debtor ☐ other (*name and title or relationship to person served*):

c. ☐ by delivery ☐ at home ☐ at business

(1) date:

(2) time:

(3) address:

d. ☐ by mailing

(1) date:

(2) place:

2. Manner of service (*check proper box*):

a. ☐ **Personal service.** By personally delivering copies. (CCP 415.10.)

b. ☐ **Substituted service on corporation, unincorporated association (including partnership), or public entity.** By leaving, during usual office hours, copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(a).)

c. ☐ **Substituted service on natural person, minor, conservatee, or candidate.** By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b).) (**Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.**)

d. ☐ **Mail and acknowledgment service.** By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30.) (**Attach completed acknowledgment of receipt.**)

e. ☐ **Certified or registered mail service.** By mailing to an address outside California (by first-class mail, postage prepaid, requiring a return receipt) copies to the person served. (CCP 415.40.) (**Attach signed return receipt or other evidence of actual delivery to the person served.**)

f. ☐ Other (*specify code section*):

☐ Additional page is attached.

3. The "Notice to the Person Served" was completed as follows:

a. ☐ as an individual

b. ☐ as the person sued under the fictitious name of (*specify*):

c. ☐ on behalf of (*specify*):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.60 (minor)

☐ other:

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.70 (conservatee)

☐ CCP 416.40 (association or partnership)

☐ CCP 416.90 (individual)

4. At the time of service, I was at least 18 years of age and not a party to this action.

5. Fee for service: \$

6. Person serving:

a. ☐ California sheriff, marshal, or constable

b. ☐ Registered California process server

c. ☐ Employee or independent contractor of a registered California process server

d. ☐ Not a registered California process server

e. ☐ Exempt from registration under Business and Professions Code, section 22350(b)

f. Name, address, and telephone number and, if applicable, county of registration and number:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(For California sheriff, marshal, or constable use only)
I certify that the foregoing is true and correct.

Date: _____

(SIGNATURE)

(SIGNATURE)

payment in exchange for the transportation continued when Cruz agreed to take Balajadia's place and deliver the drugs to Guam. In other words, the broad objective was to receive ill-gotten gains from transporting methamphetamine, and the conspiracy continued as Cruz attempted to earn his fee for transporting the drugs.

Cruz's agreement to transport the drugs represents exactly the sort of deliberate plot to subvert the law that the criminalization of conspiracy is intended to prevent. The fact that he could not carry out his role in the conspiracy because the drugs had been seized should not mitigate the illegality of his agreement. The possibility that a person in Balajadia's position can ensnare an unlimited number of acquaintances into the conspiracy web after he has agreed to cooperate with authorities is mitigated by the defense of entrapment, which the majority agrees should be rejected in this case. We should not subvert our drug laws and the law of conspiracy to protect those unfortunate enough to join a conspiracy after it has been penetrated by law enforcement.

I therefore would hold that any rational jury could have found beyond a reasonable doubt that the conspiracy continued beyond the time Cruz became involved.⁶ I would affirm the district court.⁷



6. Such a ruling would require the court to consider the merits of Cruz's contention that the trial court abused its discretion when it limited the scope of his closing argument. The court's ruling simply prevented Cruz from making an erroneous legal argument: that the conspiracy had ended simply because several coconspirators had been arrested at the airport. Thus, remand would not be necessary.

Mary Jane WILSON, Plaintiff-Appellee,

v.

Thomas David MARCHINGTON; Inland
Empire Shows, Inc., Defendants-
Appellants.

No. 96-35145.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted July 22, 1997.

Decided Sept. 23, 1997.

Member of Indian tribe sought recognition and registration of judgment entered in tribal court in personal injury action against nonmember. The United States District Court for the District of Montana, Paul G. Hatfield, J., 934 F.Supp. 1176, entered summary judgment in favor of member, and appeal was taken. The Court of Appeals, Thomas, Circuit Judge, held that: (1) principles of comity, not full faith and credit, govern whether district court should recognize and enforce tribal court judgment, (2) tribal court did not have jurisdiction over action arising from collision occurring on United States highway located within reservation; and (3) judgment of tribal court was not entitled to recognition in United States courts.

Reversed and Remanded.

1. Judgment \Rightarrow 830.1

Principles of comity, not full faith and credit, govern whether district court should recognize and enforce tribal court judgment. U.S.C.A. Const. Art. 4, § 1, cl. 1; 28 U.S.C.A. § 1738.

7. I agree with the majority that the possession conviction must be reversed. However, remanding for resentencing is unnecessary. Nothing in the record suggests that Cruz's conviction for possession enhanced his sentences for conspiracy or attempt. See *United States v. Baker*, 10 F.3d 1374, 1421 (9th Cir.1993), cert. denied, 513 U.S. 934, 115 S.Ct. 330, 130 L.Ed.2d 289 (1994).

2. Judgment ⇨830.1

Judgment of tribal court that lacked jurisdiction was not entitled to recognition in United States courts.

3. Judgment ⇨830.1

Extent to which United States, or any state, honors judicial decrees of foreign nations is matter of choice, governed by comity of nations.

4. Judgment ⇨830.1

Full faith and credit is not extended to tribal judgments by the Constitution or Congressional act. U.S.C.A. Const. Art. 4, § 1, cl. 1; 28 U.S.C.A. § 1738.

5. Judgment ⇨830.1, 831

Federal courts must neither recognize nor enforce tribal judgments if: tribal court did not have both personal and subject matter jurisdiction; or defendant was not afforded due process of law. Restatement (Third) of Foreign Relations Law § 482.

6. Judgment ⇨830.1

Federal court may, in its discretion, decline to recognize and enforce tribal judgment on equitable grounds, including following circumstances: judgment was obtained by fraud; judgment conflicts with another final judgment that is entitled to recognition; judgment is inconsistent with parties' contractual choice of forum; or recognition of judgment, or cause of action upon which it is based, is against public policy of United States or forum state in which recognition of judgment is sought. Restatement (Third) of Foreign Relations Law § 482.

7. Judgment ⇨830.1, 831

Existence of both personal and subject matter jurisdiction is necessary predicate for federal court recognition and enforcement of tribal judgment. Restatement (Third) of Foreign Relations Law § 482.

8. Judgment ⇨830.1

Comity does not require that tribe utilize traditional procedures identical for those used in United States court for tribal court judgment to be recognized and enforced in federal court. Restatement (Third) of Foreign Relations Law § 482.

9. Judgment ⇨830.1

Tribal court proceedings must afford defendant basic tenants of due process or judgment will not be recognized by United States. U.S.C.A. Const.Amend. 14; Restatement (Third) of Foreign Relations Law § 482.

10. Judgment ⇨830.1

District court is not required to reject tribal court judgment for lack of reciprocity. Restatement (Third) of Foreign Relations Law § 482.

11. Federal Courts ⇨420

Quintessentially federal character of Native American law, coupled with imperative of consistency in federal recognition of tribal court judgments, by necessity requires that ultimate decision governing recognition and enforcement of tribal judgment by United States be founded on federal law.

12. Indians ⇨32(7)

Tribal court did not have jurisdiction over personal injury action arising from collision between car driven by member of Indian tribe and a truck driven by nonmember on United States highway within boundaries of Indian reservation, precluding federal court from recognizing tribal court judgment; highway was designed, built and maintained by state with no statute or treaty authorizing tribe to govern conduct of nonmembers on highway, and tribe had consented to construction of highway, to which general public had unrestricted access. Indian Land Consolidation Act, § 4, 25 U.S.C.A. § 311.

13. Indians ⇨32(7)

Evidence was sufficient to support finding that collision between car driven by member of Indian tribe and truck driven by nonmember took place on United States highway within bounds of Indian reservation, in determining whether tribal court had jurisdiction over member's personal injury action; accident occurred while truck was trying to pass car, which was making left turn.

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Charles G. Cole, Steptoe & Johnson, Washington, District of Columbia, for amicus curiae, Burlington Northern Railroad Co.

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Lana E. Marcussen, Albuquerque, New Mexico, for amicus curiae, The Bighorn Livestock Association.

Appeal from the United States District Court for the District of Montana; Paul G. Hatfield, District Judge, Presiding. D.C. No. CV-92-00127-PGH.

Before: WRIGHT, REINHARDT, and THOMAS, Circuit Judges.

THOMAS, Circuit Judge.

[1, 2] This appeal presents the question of whether, and under what circumstances, a tribal court tort judgment is entitled to recognition in the United States Courts. We conclude that the principles of comity, not full faith and credit, govern whether a district court should recognize and enforce a

tribal court judgment. In this instance, because the tribal court lacked jurisdiction, its judgment is not entitled to recognition in the United States courts.

I

The traffic accident which precipitated this action involved Mary Jane Wilson, who is an enrolled member of the Blackfeet Indian Tribe, and Thomas Marchington, who is not. On July 17, 1989, Marchington was driving on U.S. Highway 2 within the boundaries of the Blackfeet Indian Reservation in Montana on assignment for his employer Inland Empire Shows, an Idaho carnival company. Wilson, driving ahead of Marchington on the two-lane road, signalled a left turn. Marchington, in ignorance or in disregard of Wilson's intent, attempted to pass her on the left, careening into her car as she exited Highway 2.

Wilson sued Marchington and Inland Empire in the Blackfeet Tribal Court. The tribal jury found in favor of Wilson and awarded her \$246,100. The Blackfeet Court of Appeals reversed for a hearing on whether punitive damages had been improperly awarded, but the Blackfeet Supreme Court reversed the Blackfeet Court of Appeals and reinstated the original judgment in favor of Wilson.

Claiming her judgment was entitled to full faith and credit or comity, Wilson brought suit in the United States District Court for the District of Montana to register the tribal court judgment in the federal court system. The district court granted summary judgment in favor of Wilson.

II

[3] No legal judgment has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived. Because states and Indian tribes coexist as sovereign governments, they have no direct power to enforce their judgments in each other's jurisdictions. By contrast, the United States Constitution and implementing legislation require full faith and credit be given to judgments of sister states, territories, and possessions of the United States. U.S.

Const. art. IV, § 1, cl. 1; 28 U.S.C. § 1738. The extent to which the United States, or any state, honors the judicial decrees of foreign nations is a matter of choice, governed by "the comity of nations." *Hilton v. Guyot*, 159 U.S. 113, 163, 16 S.Ct. 139, 143, 40 L.Ed. 95 (1895).

Determining comity to be a proper basis for recognizing a tribal court judgment is not a remarkable notion; indeed, both parties agree that it is appropriate. However, Wilson asserts comity only as an alternative analysis, contending that a tribal judgment must be recognized by the United States under 28 U.S.C. § 1738, the implementing legislation of the United States Constitution's Full Faith and Credit Clause.

The Constitution's Full Faith and Credit Clause provides:

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

U.S. Const. art. IV, § 1.

By its terms, the Full Faith and Credit Clause applies only to the states. Nothing in debates of the Constitutional Convention concerning the clause indicates the framers thought the clause would apply to Indian tribes. The Constitution is silent about recognition of tribal judgments, though it specifically addresses other tribal concerns. See U.S. Const. art. I, § 2, cl. 3 (excluding non-taxed Indians from the calculation of representative apportionment); art. I, § 8, cl. 3 (providing Congress the power to regulate commerce with the Indian tribes); amend. XIV, § 2 (excluding non-taxed Indians from the calculation of representative apportionment).¹ Thus, the Constitution itself does

not afford full faith and credit to Indian tribal judgments.

Initial legislation implementing the full faith and credit clause was passed in 1790. The statute was modified in 1804 to include the extension of full faith and credit to United States territories and possessions. Subsequent technical amendments were made and the current full faith and credit statute reads in relevant part:

Such Acts, records, and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

28 U.S.C. § 1738.

Because Indian nations are not referenced in the statute, the question is whether tribes are "territories or possessions" of the United States under the statute. The United States Supreme Court has not ruled on the precise issue and its pronouncements on collateral matters are inconclusive. For example, in *United States ex rel. Mackey v. Cox*, 59 U.S. (18 How.) 100, 103-04, 15 L.Ed. 299 (1855), the Court held the Cherokee nation was a territory as that term was used in a federal letters of administration statute. By contrast, in *New York ex rel. Kopel v. Bingham*, 211 U.S. 468, 474-75, 29 S.Ct. 190, 191-92, 53 L.Ed. 286 (1909), the Court cited with approval *Ex Parte Morgan*, 20 F. 298, 305 (W.D.Ark.1883) in which the district court held that the Cherokee nation was not a "territory" under the federal extradition statute. State courts have reached varied results, citing either *Mackey* or *Morgan* as authority, depending on the outcome.²

In our view, the decisive factor in determining Congress's intent was the enactment

that tribes are entitled to full faith and credit) and *In re Buehl*, 87 Wash.2d 649, 555 P.2d 1334 (1976) (citing *CIT* and concluding that tribes are entitled to full faith and credit) with *Brown v. Babbitt Ford, Inc.*, 117 Ariz. 192, 571 P.2d 689 (1977) (citing *Morgan* and holding that an Indian reservation is not a territory for purposes of full faith and credit).

1. Additionally, as a matter of constitutional philosophy, it may not make sense to extend the constitutional mandate of full faith and credit "to a legal system largely outside the purview of the Constitution." Note, *Recognition of Tribal Decisions in State Courts*, 37 Stan. L.Rev. 1397, 1414 (1985).

2. Compare *Jim v. CIT Fin. Servs.*, 87 N.M. 362, 533 P.2d 751 (1975) (citing *Mackey* and holding

of subsequent statutes which expressly extended full faith and credit to certain tribal proceedings: the Indian Land Consolidation Act, 25 U.S.C. §§ 2201-2211 (1983) (extending full faith and credit for certain actions involving trust, restricted or controlled lands), the Maine Indian Claims Settlement Act, 25 U.S.C. § 1725(g) (1980) (requiring the Passamaquoddy Tribe, the Penobscot Nation and the State of Maine to "give full faith and credit to the judicial proceedings of each other"), and the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901 *et seq.* (extending full faith and credit to tribal custody proceedings). The Indian Child Welfare Act provides in relevant part:

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

Id. § 1911(d).

A later legislative act can be regarded as a legislative interpretation of an earlier act and "is therefore entitled to great weight in resolving any ambiguities and doubts." *Erlengbaugh v. United States*, 409 U.S. 239, 243-44, 93 S.Ct. 477, 480, 34 L.Ed.2d 446 (1972) (quoting *United States v. Stewart*, 311 U.S. 60, 64-65, 61 S.Ct. 102, 105, 85 L.Ed. 40 (1940)). If full faith and credit had already been extended to Indian tribes, enactment of the Indian Land Consolidation Act, the Maine Indian Claims Settlement Act, and the Indian Child Welfare Act would not have been necessary. Further, the separate listing of territories, possessions and Indian tribes in the Indian Child Welfare Act provides an indication that Congress did not view these terms as synonymous. Thus, we conclude that Congress did not extend full

faith and credit to the tribes under 28 U.S.C. § 1738.

Further, if Congress had specifically intended to include Indian tribes under the umbrella of 28 U.S.C. § 1738, it could have easily done so either by specifically referencing them in the 1804 amendments, or by further amending the statute once ambiguous judicial constructions appeared. It chose not to, but rather elected to create a special exception in cases of Indian child custody determinations and land trusts.

Given this history, it would be imprudent of us to now construe the phrase "territories and possessions" in the 1804 statute to assume the meaning of the language Congress used in the Indian Child Welfare Act ("every territory or possession of the United States, *and every Indian tribe*") (emphasis added) and Indian Land Consolidation Act.

[4] Certainly, there are policy reasons which could support an extension of full faith and credit to Indian tribes. Those decisions, however, are within the province of Congress or the states,³ not this Court. Full faith and credit is not extended to tribal judgments by the Constitution or Congressional act, and we decline to extend it judicially.

III

In absence of a Congressional extension of full faith and credit, the recognition and enforcement of tribal judgments in federal court must inevitably rest on the principles of comity. Comity "is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other." *Hilton v. Guyot*, 159 U.S. 113, 163-64, 16 S.Ct. 139, 143-44, 40 L.Ed. 95 (1895). As a general policy, "[c]omity should be withheld only when its acceptance would be contrary or prejudicial to the interest of the nation called upon to give it effect." *Somportex Ltd. v. Philadelphia Chewing Gum Corp.*, 453 F.2d 435, 440 (3d Cir.1971). At its core,

the Eastern Shoshone and Northern Arapaho Tribes of the Wind River Reservation). Montana has judicially refused to extend full faith and credit to tribal orders, judgments and decrees. *In re Day*, 272 Mont. 170, 900 P.2d 296, 301 (1995).

3. See, e.g., Okla. Stat. tit. 12, § 728 (permitting the Supreme Court of the State of Oklahoma to extend full faith and credit to tribal court judgments); Wis. Stat. § 806.245 (granting full faith and credit to judgments of Wisconsin Indian tribal courts); Wyo. Stat. Ann. § 5-1-111 (granting full faith and credit to judicial decisions of

comity involves a balancing of interests. "[I]t is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws." *Hilton*, 159 U.S. at 164, 16 S.Ct. at 143. Although the status of Indian tribes as "dependent domestic nations" presents some unique circumstances, comity still affords the best general analytical framework for recognizing tribal judgments.

[5,6] As we recognized in *Her Majesty the Queen v. Gilbertson*, 597 F.2d 1161, 1163 n. 4 (9th Cir.1979), *Hilton* provides the guiding principles of comity.⁴ More recently, the Restatement (Third) of Foreign Relations Law of the United States (1986) [hereinafter Restatement (Third)] suggested two mandatory and six discretionary grounds for non-recognition of foreign judgments.⁵ While *Hilton* and the Restatement (Third) provide sound guidance for assessing legal judgments of other nations, special considerations arising out of existing Indian law merit some modification in the application of comity to tribal judgments. In synthesizing the traditional elements of comity with the special

4. [W]here there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion of the party that the judgment was erroneous in law or in fact.

Hilton, 159 U.S. at 202-03, 16 S.Ct. at 158.

5. The Restatement (Third) § 482 provides:

- (1) A court in the United States may not recognize a judgment of the court of a foreign state if:
 - (a) the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with due process of law; or

requirements of Indian law, we conclude that, as a general principle, federal courts should recognize and enforce tribal judgments. However, federal courts must neither recognize nor enforce tribal judgments if:

- (1) the tribal court did not have both personal and subject matter jurisdiction; or
- (2) the defendant was not afforded due process of law.

In addition, a federal court may, in its discretion, decline to recognize and enforce a tribal judgment on equitable grounds, including the following circumstances:

- (1) the judgment was obtained by fraud;
- (2) the judgment conflicts with another final judgment that is entitled to recognition;
- (3) the judgment is inconsistent with the parties' contractual choice of forum; or
- (4) recognition of the judgment, or the cause of action upon which it is based, is against the public policy of the United States or the forum state in which recognition of the judgment is sought.

[7] The lack of personal jurisdiction mandates rejection of a foreign judgment under

(b) the court that rendered the judgment did not have jurisdiction over the defendant in accordance with the law of the rendering state and with the rules set forth in § 421.

(2) A court in the United States need not recognize a judgment of the court of a foreign state if:

(a) the court that rendered the judgment did not have jurisdiction of the subject matter of the action;

(b) the defendant did not receive notice of the proceedings in sufficient time to enable him to defend;

(c) the judgment was obtained by fraud;

(d) the cause of action on which the judgment was based, or the judgment itself, is repugnant to the public policy of the United States or of the State where recognition is sought;

(e) the judgment conflicts with another final judgment that is entitled to recognition; or

(f) the proceeding in the foreign country was contrary to an agreement between the parties to submit the controversy on which the judgment is based to another forum.

the Restatement (Third) and that requirement must logically extend to tribal judgments. Although the Restatement (Third) lists subject matter jurisdiction as a discretionary inquiry, the existence of subject matter jurisdiction is a threshold inquiry in virtually every federal examination of a tribal judgment. *E.g., Strate v. A-1 Contractors*, — U.S. —, —, 117 S.Ct. 1404, 1411, 137 L.Ed.2d 661 (1997); *Montana v. United States*, 450 U.S. 544, 565–66, 101 S.Ct. 1245, 1258–59, 67 L.Ed.2d 493 (1981). Additionally, the existence of subject matter jurisdiction is mandatory under the Uniform Foreign Money-Judgments Recognition Act which has been adopted by twenty-five states, including Montana. Louise E. Teitz, *Transnational Litigation* 253 & n. 5 (1996); *Mont.Code Ann. § 25-9-601 et seq.* Accordingly, the existence of both personal and subject matter jurisdiction is a necessary predicate for federal court recognition and enforcement of a tribal judgment.

A federal court must also reject a tribal judgment if the defendant was not afforded due process of law. “It has long been the law of the United State that a foreign judgment cannot be enforced if it was obtained in a manner that did not accord with the basics of due process.” *Bank Melli Iran v. Pahlavi*, 58 F.3d 1406, 1410 (9th Cir.), *cert. denied*, — U.S. —, 116 S.Ct. 519, 133 L.Ed.2d 427 (1995). The guarantees of due process are vital to our system of democracy. We demand that foreign nations afford United States citizens due process of law before recognizing foreign judgments; we must ask no less of Native American tribes.

Due process, as that term is employed in comity, encompasses most of the *Hilton* factors, namely that there has been opportunity for a full and fair trial before an impartial tribunal that conducts the trial upon regular proceedings after proper service or voluntary appearance of the defendant, and that there is no showing of prejudice in the tribal court or in the system of governing laws. Further, as the Restatement (Third) noted, evidence “that the judiciary was dominated by the political branches of government or by an opposing litigant, or that a party was unable to obtain counsel, to secure documents or

attendance of witnesses, or to have access to appeal or review, would support a conclusion that the legal system was one whose judgments are not entitled to recognition.” Restatement (Third) § 482 cmt. b.

[8,9] Comity does not require that a tribe utilize judicial procedures identical to those used in the United States Courts. “Foreign-law notions are not per se disharmonious with due process by reason of their divergence from the common-law notions of procedure.” *Panama Processes, S.A. v. Cities Serv. Co.*, 796 P.2d 276, 286 n. 36 (Okla. 1990). Indeed, *Hilton* rejected challenges to a judgment based on lack of adequate cross-examination and unsworn testimony. 159 U.S. at 205, 16 S.Ct. at 159. Federal courts must also be careful to respect tribal jurisprudence along with the special customs and practical limitations of tribal court systems. Extending comity to tribal judgments is not an invitation for the federal courts to exercise unnecessary judicial paternalism in derogation of tribal self-governance. However, the tribal court proceedings must afford the defendant the basic tenets of due process or the judgment will not be recognized by the United States.

Marchington urges us to require reciprocal recognition of judgments as an additional mandatory prerequisite. In *Hilton*, the Supreme Court determined that a judgment from a foreign country would not be enforced by the United States courts if the foreign country would not enforce a similar American judgment in its courts. 159 U.S. at 210, 16 S.Ct. at 161. However, the reciprocity requirement has fallen into disfavor. In *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964), the Supreme Court stated, “[a]lthough *Hilton v. Guyot* ... contains some broad language about the relationship of reciprocity to comity, the case in fact imposed a requirement of reciprocity only in regard to conclusiveness of judgments, and even then only in limited circumstances.” *Id.* at 411, 84 S.Ct. at 931. According to the Restatement (Second) of Conflict of Laws (1988) [hereinafter Restatement (Second)], “[e]xcept when otherwise required by local statute, the great majority of State and federal courts have

extended recognition to judgments of foreign nations without regard to any question of reciprocity." § 98 cmt. f. The Restatement (Second) addresses the *Hilton* problem by noting that the decision involved "one isolated situation," and suggesting that *Hilton* be limited to its facts. *Id.* Additionally, Judge Learned Hand has observed that the Supreme Court "certainly did not mean to hold that an American court was to recognize no obligations or duties arising elsewhere until it appeared that the sovereign of the locus reciprocally recognized similar obligations existing here. That doctrine I am happy to say is not a part of American jurisprudence." *Direction der Disconto-Gesellschaft v. United States Steel Corp.*, 300 F. 741, 747 (S.D.N.Y.1924), *aff'd*, 267 U.S. 22, 45 S.Ct. 207, 69 L.Ed. 495 (1925); see *Cunard S.S. Co. Ltd. v. Salen Reefer Servs. AB*, 773 F.2d 452, 460 (2d Cir.1985).

Although courts have expressed disaffection for the reciprocity requirement, they have not entirely disavowed it. For example, in *Gilbertson*, we recognized that "the reciprocity requirement has fallen into some disfavor," 597 F.2d at 1164 n. 6, and agreed that "reciprocity may no longer be a requirement," *id.* at 1165-66. However, we also noted that reciprocity "certainly remains a factor which may be considered in deciding whether to recognize a foreign country's judgment for taxes." *Id.* at 1166.

The general rationale underlying rejection of the reciprocity requirement is that it is a matter of diplomacy, best negotiated by the executive and legislative branches. There are, of course, substantive differences between foreign relations with other nations and domestic relations with Native American

tribes. Further, a policy of requiring reciprocity with foreign nations has practical limits which would not affect a domestic analysis. If a litigant sought recognition of a Djibouti judgment in Montana, for example, it is unlikely that Djibouti would have had the prior opportunity to consider recognition of a Montana judgment.

Despite these dissimilarities, the theory that the imposition of a reciprocity requirement is not a matter for courts to decide independently is generally sound. The question of whether a reciprocity requirement ought to be imposed on an Indian tribe before its judgments may be recognized is essentially a public policy question best left to the executive and legislative branches. The fact that some states have chosen to impose such a condition by statute reinforces this conclusion,⁶ as does the judicial response of looking to applicable statutes to decide reciprocity issues. See, e.g., *Banque Libanaise Pour Le Commerce v. Khreich*, 915 F.2d 1000, 1003-04 (5th Cir.1990) (examining the Texas Recognition Act to determine if an Abu Dahbi judgment should be enforced).

[10] Neither the State of Montana nor, more relevantly, Congress has spoken on this question and we do not believe that *Hilton* or any controlling case law concerning recognition of foreign judgments requires a district court to reject a tribal judgment for lack of reciprocity. Thus, we decline Marchington's suggestion to adopt reciprocity as a judicially-created mandatory requirement.⁷

Lack of tribal jurisdiction and absence of due process, then, are the only mandatory reasons for a district court to reject a tribal judgment. The court may, in the exercise of

tribal court certifies that it grants full faith and credit to the orders and judgments of Wyoming).

6. See, e.g., S.D. Codified Laws § 1-1-25(2)(b) (permitting South Dakota courts to recognize a tribal judgment if the courts of that tribe recognize the orders and judgments of the South Dakota courts); Okla. Stat. tit. 12, § 728(B) (allowing the Supreme Court of Oklahoma to recognize tribal court judgments where the tribal courts agree to grant reciprocity of judgments); Wis. Stat. § 806.245(1)(e) (granting full faith and credit to judgments of Wisconsin Indian tribal court judgments if, *inter alia*, the tribe grants full faith and credit to the judgments of Wisconsin courts); Wyo. Stat. Ann. § 5-1-111(a)(iv) (granting full faith and credit to the Eastern Shoshone and Northern Arapaho Tribes if, *inter alia*, the

7. Whether a district court may, in the exercise of its discretion, reject a judgment for lack of reciprocity is a question we leave for another day. Although best left to our sister branches of government, there may be an appropriate case in which the record demonstrates significant public policy factors which might be sufficient for the district court to consider reciprocity under the "public policy" discretionary exception. Thus, we decline to endorse or preclude its discretionary consideration in a proper case.

its discretion, choose not to honor a tribal judgment for one of the other enumerated reasons. This approach satisfies two competing concerns: it provides tribes with a mechanism by which the judgments of their courts may be recognized by the United States while assuring defendants of due process of law and other safeguards inherent in our judicial system.

IV

[11] We reject the assertions of Marchington and several Amicus Curiae that the recognition of tribal judgments requires the application of state, rather than federal, law. We apply federal common law when a federal rule of decision is "necessary to protect uniquely federal interests." *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 426, 84 S.Ct. 923, 939, 11 L.Ed.2d 804 (1964). Indian law is uniquely federal in nature, having been drawn from the Constitution, treaties, legislation, and an "intricate web of judicially made Indian law." *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 206, 98 S.Ct. 1011, 1020, 55 L.Ed.2d 209 (1978). State law, especially the compacts between a state and a tribe, may be of substantial significance in a particular case. However, the quintessentially federal character of Native American law, coupled with the imperative of consistency in federal recognition of tribal court judgments, by necessity require that the ultimate decision governing the recognition and enforcement of a tribal judgment by the United States be founded on federal law. *Chilkat Indian Village v. Johnson*, 870 F.2d 1469, 1473 (9th Cir.1989); see also *In re Greene*, 980 F.2d 590, 595 (9th Cir.1992) ("[T]he [district] court should have looked at the scope of tribal immunity under federal law, rather than the extent of comity afforded under state law.").

V

[12] Applying the comity analysis to this case, we find that the tribal judgment is not entitled to recognition or enforcement because the tribal court lacked subject matter jurisdiction, one of the mandatory reasons for refusing to recognize a tribal court judgment. Our jurisdictional determination is

commanded by *Strate v. A-1 Contractors*, — U.S. —, 117 S.Ct. 1404, 137 L.Ed.2d 661 (1997), decided April 28, 1997.

The Supreme Court's holding in *Strate* is succinctly stated in its opening paragraphs: "[T]ribal courts may not entertain claims against nonmembers arising out of accidents on state highways, absent a statute or treaty authorizing the tribe to govern the conduct of nonmembers on the highway in question." *Id.* at —, 117 S.Ct. at 1408.

The Supreme Court analyzed the North Dakota highway at issue in *Strate*, and concluded that "[t]he right-of-way North Dakota acquired for the State's highway renders the 6.59-mile stretch equivalent, for nonmember governance purposes, to alienated, non-Indian land." *Id.* at —, 117 S.Ct. at 1413 (footnote omitted). To arrive at this conclusion, the Supreme Court made the following observations about the highway right-of-way: (1) the right-of-way was obtained pursuant to congressional legislation; (2) the grant of the right-of-way was acquired with the consent of the Indian tribe; (3) the right-of-way is open to the public; and (4) the right-of-way is controlled and maintained by the State. *Id.* at —, 117 S.Ct. at 1414.

U.S. Highway 2, the road at issue in this appeal, is similar in all relevant respects to the highway in *Strate*. It is located on a right-of-way granted to the State of Montana under Section 4 of the Act of March 3, 1901, ch. 832, 31 Stat. 1058, 1084 (codified at 25 U.S.C. § 311). Under the section, the Secretary of the Interior is authorized

to grant permission ... to the proper State or local authorities for the opening and establishment of public highways in accordance with the laws of the State or territory in which the lands are situated, through any Indian reservation or through any lands which have been allotted in severalty to any individual Indians under laws or treaties but which have not been conveyed to the allottees with full power of alienation.

See also Act of March 4, 1915, ch. 161, § 2, 38 Stat. 1188 ("That the legal authorities charged with the duty of laying out and opening public roads and highways under the

laws of the State of Montana, having jurisdiction over any territory embraced within any Indian reservation in Montana, are hereby authorized and empowered to lay out and open public roads within any of the said Indian reservations...."). Therefore, like the highway at issue in *Strate*, Highway 2 is a state highway constructed on a right-of-way granted pursuant to a federal statute.

Also similar to the situation in *Strate*, the tribe had consented to the right-of-way grant. Under the Treaty of 1855 with the Blackfeet Nation, the tribe agreed:

For the purpose of establishing travelling thoroughfares through their country, and the better to enable the President to execute the provisions of this treaty, the aforesaid nations and tribes do hereby consent and agree and the United States may, within the countries respective occupied and claimed by them, construct roads of every description....

Treaty with the Blackfeet Nation, October 17, 1855, U.S.-Blackfeet Nation, art. 8, 11 Stat. 867.

Finally, also as in *Strate*, the district court found, and no party or Amici denies, that the public has unrestricted access to Highway 2.

Thus, this case mirrors the facts of *Strate* almost precisely: it was an automobile accident between two individuals on a United States highway designed, built, and maintained by the State of Montana, with no statute or treaty authorizing the tribe to govern the conduct of nonmembers on the highway. The tribe had consented to construction of the road to which the general public had unrestricted access.

[13] The question of whether the accident occurred on, or just off, Highway 2 is disputed by the parties. The district court, however, determined that the accident occurred on Highway 2, and we review this finding only for clear error. *Campbell v. Wood*, 18 F.3d 662, 681 (9th Cir.1994) (en banc). There are facts in the record which support the district court's conclusion. The accident occurred

while Marchington was trying to pass Wilson who, presumably unknown to Marchington, was turning left. Wilson's car apparently was struck in the side. Wilson argues the impact may have occurred just off Highway 2 because the truck was trying to avoid Wilson by driving on the left. However, both parties agreed that the State of Montana's right-of-way did not end at the pavement and could have extended up to fifty feet from the center line. We also note that the description of the accident by the Blackfeet Supreme Court would seem to support the inference that the accident occurred on Highway 2.⁸ Given these facts, there was no clear error in the district court's determination.

In *Strate*, the Supreme Court noted that even when the accident occurs on alienated land, a tort action may be brought in tribal court if one of the two following exceptions outlined in *Montana v. United States*, 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed.2d 493 (1981), is met: (1) regulation of consensual relationships and (2) regulation of conduct which "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Montana*, 450 U.S. at 566, 101 S.Ct. at 1258. The Supreme Court concluded in *Strate*, however, that a car accident on a public highway does not meet either *Montana* exception. *Strate*, — U.S. at —, —, 117 S.Ct. at 1415, 1416.

Wilson and several Amici claim that a traffic accident injuring a tribal member sufficiently affects the economic security, political integrity, or health and welfare of the tribe, thus satisfying the second *Montana* exception. However, in *Strate*, this notion was rejected by Justice Ginsburg, speaking for the Court, who observed that:

Undoubtedly, those who drive carelessly on a public highway running through a reservation endanger all in the vicinity, and surely jeopardize the safety of tribal members. But if Montana's second exception requires no more, the exception would severely shrink the rule.

crossed over a solid double yellow line running down the center of the highway and struck the left side of plaintiff's vehicle causing injuries to her neck and back."

8. The Blackfeet Supreme Court provides the following account of the accident: "As plaintiff began her turn off of Highway #2 onto the Whitford access road defendants' semi-truck

Id., — U.S. at —, 117 S.Ct. at 1415. If the possibility of injuring multiple tribal members does not satisfy the second *Montana* exception under *Strate*, then, perforce, Wilson's status as a tribal member alone cannot.⁹ To invoke the second *Montana* exception, the impact must be "demonstrably serious and must imperil the political integrity, the economic security, or the health and welfare of the Tribe." *Brendale v. Confederated Tribes & Bands of the Yakima Indian Nation*, 492 U.S. 408, 431, 109 S.Ct. 2994, 3008, 106 L.Ed.2d 343 (1989). It is difficult to argue that these important interests will be diminished, much less jeopardized, if Wilson must present her individual tort claims in state or federal court, where she has plain, speedy, and adequate remedies.¹⁰ As Justice Ginsburg observed, "[n]either regulatory nor adjudicatory authority over the state highway accident at issue is needed to preserve the right of reservation Indians to make their own laws and be ruled by them. . . . Opening the Tribal Court for [the plaintiffs'] optional use is not necessary to protect tribal self government[.]" *Strate*, — U.S. at —, 117 S.Ct. at 1416 (internal quotation omitted). Thus, although the parameters of the *Strate* holding are not fully defined, its application to the specific circumstances of this case precludes tribal court jurisdiction.

Finally, the Blackfeet Tribe (as Amicus Curiae), contends that *Hinshaw v. Mahler*, 42 F.3d 1178 (9th Cir.1994), which found tribal jurisdiction in an automobile accident, controls. However, *Hinshaw* has been effectively overruled by *Strate* for its general propositions concerning tribal jurisdiction and is no longer viable law on those issues.

VI

The principles of comity require that a tribal court have competent jurisdiction be-

9. We rejected a similar *Montana* contention in *Yellowstone County v. Pease*, 96 F.3d 1169, 1170-71 (9th Cir.1996) (holding that the Crow tribal court did not have jurisdiction to enjoin enforcement of a tax because a dispute involving one particular property owned by a tribal member was insufficient to invoke the second *Montana* exception).

10. This is not only true as a general proposition, but equitable tolling would prevent the assertion of a statute of limitations defense against Wilson based on the passage of time litigating in tribal and federal court if Wilson elects to refile her

fore its judgment will be recognized by the United States courts. Because the tribal court did not have subject matter jurisdiction over Marchington or Inland Empire Shows, Inc., Wilson's judgment may neither be recognized nor enforced in the United States courts. The district court foresaw this very result, but constrained by *Hinshaw*, entered summary judgment in favor of Wilson. Ironically, although the district court was correct and even prescient on all substantive matters, we must reverse its judgment in favor of Wilson and remand with instructions to enter judgment in favor of Marchington and Inland Empire Shows. Each party shall bear its own costs on appeal.

REVERSED AND REMANDED



UNITED STATES of America,
Plaintiff-Appellee,

v.

Phillip SCHUMAN, Defendant-Appellant.

No. 96-50528.

United States Court of Appeals,
Ninth Circuit.

Submitted July 14, 1997.*

Decided Sept. 24, 1997.

Defendant pleaded guilty in the United States District Court for the Southern Dis-

complaint in state or federal court following remand. *Capital Tracing, Inc. v. United States*, 63 F.3d 859, 863 (9th Cir.1995) (equitable tolling in federal court); *Chance v. Harrison*, 272 Mont. 52, 899 P.2d 537, 539 (1995) (equitable tolling in Montana state courts); see also *Burnett v. New York Central Railroad Co.*, 380 U.S. 424, 85 S.Ct. 1050, 13 L.Ed.2d 941 (1965) (holding that equitable tolling would apply to an FELA claim timely filed in the wrong venue).

* The panel unanimously finds this case suitable for decision without oral argument. See Fed. R.App. P. 34(a); 9th Cir. R. 34-4.

Rule 10. Tribal Court Orders and Judgments**Rule 10.01 Recognition Governed by Statute or Regulations.**

The courts of this state shall follow applicable state and federal statutes, regulations, and rules that either mandate or provide procedures for recognition and enforcement of orders, judgments, and other judicial acts of the tribal courts of any federally recognized Indian tribe. Applicable statutes include but are not limited to:

- (1) Violence Against Women Act, United States Code, title 18, section 2265;
- (2) Indian Child Welfare Act, United States Code, title 25, section 1911;
- (3) National Indian Forest Resources Management Act, United States Code, title 25, section 3106;
- (4) American Indian Agricultural Resources Management Act, United States Code, title 25, section 3713;
- (5) Full Faith and Credit for Child Support Orders Act, United States Code, title 28, section 1738B;
- (6) Minnesota Indian Family Preservation Act, Minnesota Statutes, section 260.771;
- (7) Uniform Interstate Family Support Act, Minnesota Statutes, sections 518C.101 to 518C.905;
- (8) Uniform Custody Jurisdiction and Enforcement Act, Minnesota Statutes, section 518D.104;
- (9) Minnesota Uniform Foreign-Country Money Judgments Recognition Act, Minnesota Statutes, sections 548.54 to 548.63.

(Amended effective September 1, 2018.)

Rule 10.02 Enforcement of Civil Commitment Orders.

The enforcement of orders for civil commitment issued by tribal courts is governed by Minnesota Statutes, section 253B.212. The district court may enter an order enforcing a tribal court order in accordance with this rule.

(a) Civil commitment orders entered by the tribal courts of the Red Lake Band of Chippewa Indians and the White Earth Band of Ojibwe Indians shall be enforced in accordance with Minnesota Statutes, section 253B.212, subdivision 1 or 1a.

(b) Civil commitment orders entered by the tribal courts that are subject to a contract for the care and treatment between a tribe (or the Indian Health Service of the United States Department of Health and Human Services for the benefit of members of a tribe) and the commissioner of human services shall be enforced in accordance with Minnesota Statutes, section 253B.212, subdivision 1b.

(c) For all other civil commitment orders entered by a tribal court, or in any case where directed by the court, the party seeking to enforce the order must proceed by petition to the Minnesota District Court under Rule 10.03, and in addition must serve a copy of that petition on each of the parties to the tribal court proceedings as well as the Minnesota Commissioner of Human Services and the director of the facility where the person is proposed to be committed. The court may determine when a response to that petition is due and whether a hearing is required or permitted if

requested, but shall not hear the matter without notice to all other interested parties except as allowed under Rule 3 of these Rules.

(Amended effective September 1, 2018.)

Rule 10.03 Enforceability of Other Tribal Court Orders and Judgments.

(a) Applicability. Rule 10.03 applies to tribal court orders and judgments that are not subject to Rules 10.01 or 10.02(a) or (b).

(b) Procedure. A party seeking enforcement of an order or judgment of the tribal court of any federally recognized Indian tribe that is not governed by Rules 10.01 or 10.02 shall proceed by petition, or in a pending action by motion. That party must serve a copy of the petition or motion on each of the parties to the tribal court proceeding in which the judgment or order was entered. The court may determine how soon after service of the petition any response is due. The court may determine whether to hold a hearing on the petition. The court shall not determine the matter without notice to all other interested parties except as allowed under Rule 3 of these rules.

(c) Enforceability and Exceptions. Courts of this state shall recognize and enforce an order or judgment of a tribal court of record of a federally recognized Indian tribe, unless a party subject to the order or judgment demonstrates any of the following:

- (1) the order or judgment is invalid on its face or no longer remains in effect;
- (2) the tribal court lacked personal or subject-matter jurisdiction;
- (3) the affected party was not afforded due process rights;
- (4) the order or judgment was obtained by fraud, duress, or coercion; or

(5) the tribal court does not reciprocally recognize and enforce orders, judgments and decrees of the courts of this state.

(Added effective January 1, 2004; amended effective September 1, 2018.)

Advisory Committee Comment - 2007 Amendment

Introduction. Rule 10 is a new rule intended to provide a starting point for enforcing tribal court orders and judgments where recognition is mandated by state or federal law (Rule 10.01), and to establish factors for determining the effect of these adjudications where federal or state statutory law does not do so (Rule 10.02).

The rule applies to all tribal court orders and judgments and does not distinguish between tribal courts located in Minnesota and those sitting in other states. The only limitation on the universe of determinations is that they be from tribal courts of a federally-recognized Indian tribe. These courts are defined in 25 U.S.C. section 450b(e), and a list is published by the Department of the Interior, Bureau of Indian Affairs. See, e.g., 70 FED. REG. 71194 (Nov. 25, 2005).

*Tribal court adjudications are not entitled to full faith and credit under the United States Constitution, which provides only for full faith and credit for "public acts, records, and judicial proceedings of every other state." U.S. CONST. Art IV, section 1. But state and federal statutes have conferred the equivalent of full faith and credit status on some tribal adjudications by mandating that they be enforced in state court. Where such full faith and credit is mandatory, a state does not exercise discretion in giving effect to the proper judgments of a sister state. *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 233 (1998) ("A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for*

recognition throughout the land.") Through full faith and credit, a sister state's judgment is given res judicata effect in all other states. See, e.g., id.; Hansberry v. Lee, 311 U.S. 32, 42 (1940).

The enforcement in state court of tribal court adjudications that are not entitled to the equivalent of full faith and credit under a specific state or federal statute, is governed by the doctrine of comity. Comity is fundamentally a discretionary doctrine. It is rooted in the court's inherent powers, as was early recognized in United States jurisprudence in Hilton v. Guyot, 159 U.S. 113, 163-164 (1895), where the court said: "No law has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived. The extent to which the law of one nation, as put in force within its territory, whether by executive order, by legislative act, or by judicial decree, shall be allowed to operate within the dominion of another nation, depends upon what our greatest jurists have been content to call 'the comity of nations.'"

This inherent power was recognized in Minnesota in Traders' Trust Co. v. Davidson, 146 Minn. 224, 227, 178 N.W. 735, 736 (1920) (citing Hilton, 159 U.S. at 227) where the court said: "Effect is given to foreign judgments as a matter of comity and reciprocity, and it has become the rule to give no other or greater effect to the judgment of a foreign court than the country or state whose court rendered it gives to a like judgment of our courts." In Nicol v. Tanner, 310 Minn. 68, 75-79, 256 N.W.2d 796, 800-02 (1976) (citing the Restatement (Second) of Conflicts of Laws section 98 (1971)), the court further developed the doctrine of comity when it held that the statement in Traders' Trust Co. that enforcement required a showing of reciprocity was dictum; that "reciprocity is not a prerequisite to enforcement of a foreign judgment in Minnesota;" and that the default status of a foreign judgment "should not affect the force of the judgment."

Statutory Mandates. Rule 10.01 reflects the normal presumption that courts will adhere to statutory mandates for enforcement of specific tribal court orders or judgments where such a statutory mandate applies. Federal statutes that do provide such mandates include:

1. *Violence Against Women Act of 2000, 18 U.S.C. section 2265 (2003) (full faith and credit for certain protection orders).*
2. *Indian Child Welfare Act, 25 U.S.C. section 1911(d) (2003) ("full faith and credit" for certain custody determinations).*
3. *Full Faith and Credit for Child Support Orders Act, 28 U.S.C. section 1738B(a) (2003) ("shall enforce" certain child support orders and "shall not seek or make modifications ... except in accordance with [certain limitations]").*

In addition to federal law, the Minnesota Legislature has addressed custody, support, child placement, and orders for protection. The Minnesota Legislature adopted the Uniform Child Custody Jurisdiction and Enforcement Act, Minnesota Statutes 2002, sections 518D.101-518D.317, which: (1) requires recognition and enforcement of certain child custody determinations made by a tribe "under factual circumstances in substantial conformity with the jurisdictional standards of" the Act; and (2) establishes a voluntary registration process for custody determinations with a 20-day period for contesting validity. Minnesota Statutes 2002, sections 518D.103 and 518D.104 (not applicable to adoption or emergency medical care of child; not applicable to extent ICWA controls). In addition, the Minnesota Legislature has adopted the Uniform Interstate Family Support Act, Minnesota Statutes 2002, sections 518C.101 to 518C.902, which provides the procedures for enforcement of support orders from another state ["state" is defined to include an Indian tribe, Minnesota Statutes 2002, section 518C.101, paragraph (s), clause (1)] with or without registration, and enforcement and modification after registration. The Minnesota Legislature has also adopted the Minnesota Indian Family Preservation Act, Minnesota Statutes 2002, sections 260.751 to 260.835, which provides, among other things, that tribal court orders concerning child placement

(adoptive and pre-adoptive placement, involuntary foster care placement, termination of parental rights, and status offense placements) shall have the same force and effect as orders of a court of this state. Minnesota Statutes 2002, section 260.771, subdivision 4. In 2006 the Minnesota Legislature adopted Minnesota Statutes 2002, section 518B.01, subdivision 19a, which requires enforcement of certain foreign or tribal court orders for protection.

The facial validity provision in Rule 10.01(b)(2) fills in a gap in state law. Minnesota Statutes 2002, section 518B.01, subdivision 14, paragraph (e), authorizes an arrest based on probable cause of violation of tribal court order for protection; although this law includes immunity from civil suit for a peace officer acting in good faith and exercising due care, it does not address facial validity of the order. Similar laws in other jurisdictions address this issue. See, e.g., 720 ILL. COMP. STAT. 5/12-30(a)(2) (Supp. 2003); OKLA. STAT. tit. 22 section 60.9B(1) (2003); WISC. STAT. section 813.128(1) (2001-02).

The Minnesota Legislature has also addressed enforcement of foreign money judgments. The Minnesota Uniform Foreign Country Money-Judgments Recognition Act, Minnesota Statutes 2002, section 548.35, creates a procedure for filing and enforcing judgments rendered by courts other than those of sister states. Tribal court money judgments fall within the literal scope of this statute and the statutory procedures therefore may guide Minnesota courts considering money judgments. Cf. Anderson v. Engelke, 954 P.2d 1106, 1110-11 (Mont. 1998) (dictum) (statute assumed to allow enforcement by state courts outside of tribal lands, but question not decided). In general, money judgments of tribal courts are not entitled to full faith and credit under the Constitution, and the court is allowed a more expansive and discretionary role in deciding what effect they have. Rule 10.02(a) is intended to facilitate that process.

Discretionary Enforcement: Comity. *Where no statutory mandate expressly applies, tribal court orders and judgments are subject to the doctrine of comity. Rule 10.02(a) does not create any new or additional powers but only begins to describe in one convenient place the principles that apply to recognition of orders and judgments by comity.*

Comity is also an inherently flexible doctrine. A court asked to decide whether to recognize a foreign order can consider whatever aspects of the foreign court proceedings it deems relevant. Thus Rule 10.02(a) does not dictate a single standard for determining the effect of these adjudications in state court. Instead, it identifies some of the factors a Minnesota judge may consider in determining what effect such a determination will be given. Rule 10.02(a) does not attempt to define all of the factors that may be appropriate for consideration by a court charged with determining whether a tribal court determination should be enforced. It does enumerate many of the appropriate factors. It is possible in any given case that one or more of these factors will not apply. For example, reciprocity is not a pre-condition to enforceability generally, Nicol, 310 Minn. at 75-79, 256 N.W.2d at 800-02, but may be relevant in some circumstances. Notice of the proceedings and an opportunity to be heard (or the prospect of notice and right to hearing in the case of ex parte matters) are fundamental parts of procedural fairness in state and federal courts and are considered basic elements of due process; it is appropriate at least to consider whether the tribal court proceedings extended these rights to the litigants. The issue of whether the tribal court is "of record" may be important to the determination of what the proceedings were in that court. A useful definition of "of record" is contained in the Wisconsin statutes. WIS. STAT. section 806.245(1)(c) (2001-02); see also WIS. STAT. section 806.245(3) (2001-02) (setting forth requirements for determining whether a court is "of record"). The rule permits the court to inquire into whether the tribal court proceedings offered similar protections to the parties, recognizing that tribal courts may not be required to adhere to the requirements of due process under the federal and state constitutions. Some of the considerations of the rule are drawn from the requirements of the Minnesota Uniform Enforcement of Foreign Judgments Act, Minnesota Statutes 2002, sections 548.26 to 548.33. For

example, contravention of the state's public policy is a specific factor for non-recognition of a foreign state's judgment under Minnesota Statutes 2002, section 548.35, subdivision 4, paragraph (b), clause (3); it is carried forward into Rule 10.02(a)(7). Inconsistency with state public policy is a factor for non-recognition of tribal court orders under other states' rules. See MICH. R. Civ. P. 2.615(C)(2)(c); N.D. R. CT. 7.2(b)(4).

Hearing. *Rule 10.02(b) does not require that a hearing be held on the issues relating to consideration of the effect to be given to a tribal court order or judgment. In some instances, a hearing would serve no useful purpose or would be unnecessary; in others, an evidentiary hearing might be required to resolve contested questions of fact where affidavit or documentary evidence is insufficient. The committee believes the discretion to decide when an evidentiary hearing is held should rest with the trial judge.*

Advisory Committee Comment - 2018 Amendments

Rule 10.01 moves the list of statutes out of the comments and into the rule itself to provide greater visibility. The list is non-exhaustive to allow for future enactments.

Former Rule 10.01(b) is deleted because the Violence Against Women Act is now expressly included in Rule 10.01 and the historic issues that prompted the former rule have been addressed by legislation. See Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (March 7, 2013).

Rule 10.02 is a new rule intended to provide clear procedural guidance for enforcement by state courts of tribal court orders for civil commitment. The rule is structured to implement the requirements created by statute, Minnesota Statutes, section 253B.212. The primary purpose of the rule is to provide a requirement for notice and an opportunity to be heard for all parties to the tribal court proceeding as well as the Minnesota Commissioner of Human Services and the director of a facility where the person is proposed to be committed. This requirement applies in Rule 10.02(c) to commitment orders that are not otherwise covered by Rule 10.02(a) and 10.02(b).

Rule 10.03(b) recognizes two methods for asking a court for an order enforcing a tribal court adjudication. Most often, a petition seeking recognition will be necessary. The rule also allows a motion in a pending action. This would allow use of a tribal court adjudication, for example, in an existing action to establish res judicata or collateral estoppel based on the tribal court adjudication.

Rule 10.03(c) identifies specific factors under which a state court can decline to enforce a tribal court order of judgment. These factors restate those formerly set forth in Rule 10.02. Several of the former factors are combined under the broad category of Rule 10.03(c)(3), failure to afford "due process." This is an inherently flexible standard, guided by the interests of the parties. The rule establishes that process is due, but does not define the specific process due. Courts may fairly look to what process would be due in analogous state or federal court proceedings. Common requirements of due process include notice of the proceedings, the right to be heard, the right to appear and both examine and compel the attendance of witnesses, and the right to a fair hearing before an independent judge. The rule does not include the "catch-all" provision of former rule 10.02(10). This deletion is not intended to limit the ability of courts to consider an opposing party's claim that enforcement is not in the interest of justice. See Minn. Gen. R. Prac. 1.02 ("A judge may modify the application of these rules to any case to prevent manifest injustice.")

Rule 10.03(c)(5) retains the provision of the current version of Rule 10 allowing the court to consider reciprocity as part of its comity-based standard for enforcement of tribal court orders and judgments. The Minnesota Supreme Court has declined to make reciprocity a part of the showing needed to enforce a foreign judgment for child support payments, but has not rejected it

as a proper consideration in all cases, or in the context of tribal court adjudications. See Nicol v. Tanner, 310 Minn. 68, 75-79, 256 N.W.2d 796, 800-02 (1976).

Probate and Mental Health – Collaborating on issues of Elder Abuse, Mental Health & Competency for Tribal Members

*Mr. Christopher Haug, Probate Attorney, Superior Court of California, County of Los Angeles
Christine Williams, Senior Assistant Attorney General, California Department of Justice, Office of the Attorney General/ Public Rights Division, Native American and Tribal Affairs*

CALIFORNIA ATTORNEY OR INTENDED REGISTRANT WITHOUT CALIFORNIA ATTORNEY:		STATE BAR NUMBER:	
NAME:			
FIRM NAME:			
STREET ADDRESS:			
CITY:	STATE:	ZIP:	
TELEPHONE NO.:	FAX NO.:		
E-MAIL ADDRESS:			
ATTORNEY FOR <i>(name)</i> :			

CONSERVATORSHIP OF THE	<input type="checkbox"/> PERSON	<input type="checkbox"/> ESTATE	OF
<i>(Name)</i> :			
			CONSERVATEE

NOTICE OF INTENT TO REGISTER CONSERVATORSHIP* (California Conservatorship Jurisdiction Act)		
JURISDICTION WHERE CONSERVATORSHIP OR ADULT GUARDIANSHIP CASE FILED:		
COURT:	DEPT.:	CASE NUMBER:
TITLE OF PROCEEDING:		

1. NOTICE is given that *(name)*:
(specify fiduciary or representative capacity):
intends to register the conservatorship proceeding identified above with the following California superior court:
Superior Court, County of _____, on or after *(specify date**)*: _____.

2. NOTICE is further given that:
 - a. A conservator in a conservatorship registered in California under the California Conservatorship Jurisdiction Act (chapter 8 of part 3 of division 4 of the Probate Code, commencing with section 1980) taking an action under the Act is fully subject to the law of California governing the action, including all applicable court procedures concerning the action, and is not authorized to take any action prohibited by that law.
 - b. If a conservator in a conservatorship registered in California under the Act proposes to take a specific action that requires court approval or other action in court under California law, the conservator will be required to notify any person entitled to receive a copy of this Notice of the request for court approval or other court action. The person notified will have an opportunity to object or otherwise participate in the court proceeding at that time, in the same manner as other persons are entitled to object or otherwise participate under the law of California.
 - c. Information about a conservator's rights, duties, limitations, and responsibilities under California law may be found in a publication titled *Handbook for Conservators*, which is posted on the Judicial Council of California's website at: www.courts.ca.gov/documents/handbook.pdf.
 - d. Except in the case of a conservatorship filed in and supervised by the court of a California Indian tribe with jurisdiction, registration of a conservatorship in California is effective only while the conservatee resides outside California and does not authorize the conservator to take any action while the conservatee resides in California.

* Prepare and serve (deliver) a separate *Notice of Intent to Register Conservatorship* for each court in which you intend to register this conservatorship.

** The date of registration must be 15 or more days after this notice is mailed or personally delivered (Prob. Code, § 2014(a)).

(Name):

CONSERVATEE

INSTRUCTIONS FOR DELIVERY OR SERVICE OF NOTICE OF INTENT TO REGISTER

A copy of this *Notice of Intent to Register Conservatorship* must be delivered, at least 15 days before registration of the conservatorship in California, to (1) the court that is supervising the conservatorship or guardianship proceeding in the state or other jurisdiction other than California shown on the first page of this form; (2) each person who has the right under the law of that jurisdiction to notice of the date, time, and place of a court hearing on a petition for the appointment of a guardian of an adult or a conservator; and (3) each person who would be entitled to notice of the date, time, and place of a court hearing on a petition for the appointment of a conservator in California (see Prob. Code §§ 1821–1824). These copies may be delivered by mail. However, copies of this Notice may be personally delivered instead of mailed. The registrant (the person who intends to register the conservatorship in California) must show the court that copies of this Notice have been delivered in compliance with applicable law. The registrant does this by performing the delivery and completing and signing a proof of delivery. The Notice is then combined with certified copies of the conservatorship appointment order, Letters of Conservatorship or other letters of office, any surety bond, and the original signed *Conservatorship Registration Cover Sheet and Attestation of Conservatee's Nonresidence in California* (form GC-360) for filing in the California court selected for registration (see Prob. Code §§ 2011–2013).

Pages 2–4 of this form contain a proof of delivery that may be used only to show delivery by mail. To show personal delivery, each person who performs the delivery must complete and sign a proof of personal delivery or service, and each signed copy of that proof must be attached to this Notice when it is delivered to the court to complete registration. You may use form number POS-020(P) to show personal delivery of this Notice. A fillable copy of that form (and all other forms, listed by their form numbers) may be found on the Judicial Council's Internet website, at www.courts.ca.gov/formnumber.htm.

PROOF OF DELIVERY BY MAIL

1. I am over the age of 18 years. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is (*specify*):
3. I delivered the foregoing *Notice of Intent to Register Conservatorship* on each person named below by enclosing a copy in an envelope addressed as shown below AND
 - a. ☐ depositing the sealed envelope with the United States Postal Service on the date and at the place shown in item 4 with the postage fully prepaid.
 - b. ☐ placing the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
4.
 - a. Date mailed:
 - b. Place mailed (*city, state*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

Name and Relationship to Conservatee

Address (number, street, city, state, and zip code)

1. Appointing or Supervising Court

--

--

2. Conservatee or Ward

--

--

CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF

(Name):

CONSERVATEE

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

Name and Relationship to Conservatee

Address (*number, street, city, state, and zip code*)

3. Persons Entitled to Notice of Hearing of Petition for Appointment of Conservator or Guardian in Appointing Court

☐ Additional persons listed on Attachment 3 (you may use form POS-30(P) for this purpose).

CONSERVATORSHIP OF THE ☐ PERSON ☐ ESTATE OF

(Name):

CONSERVATEE

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

Name and Relationship to Conservatee

Address (number, street, city, state, and zip code)

4. Persons Entitled to Notice of Hearing of Petition for Appointment of Conservator in California (Prob. Code, §§ 1821–1824)*

☐ Additional persons listed on Attachment 4 (you may use form POS-30(P) for this purpose).

*** You do not need to repeat names, relationships to Conservatee, and addresses of persons listed in item 3.**

Request for Elder or Dependent Adult Abuse Restraining Orders

Read *Can a Restraining Order to Prevent Elder or Dependent Adult Abuse Help Me?* (form [EA-100-INFO](#)) before completing this form. Also fill out *Confidential CLETS Information* (form [CLETS-001](#)) with as much information as you know.

Clerk stamps date here when form is filed.

Fill in court name and street address:

Superior Court of California, County of

Court fills in case number when form is filed.

Case Number:

1 Elder or Dependent Adult in Need of Protection

Full Name: _____

Gender: ☐ M ☐ F ☐ Nonbinary Age: _____

2 Person From Whom Protection Is Sought

Full Name: _____

Address (if known): _____

City: _____ State: _____ Zip: _____

3 Person Requesting Order

Who is asking the court for protection? (Check a, b, or c):

a. ☐ The elder or dependent adult named in ①.

b. ☐ Name: _____
 conservator of the ☐ person ☐ estate ☐ person and estate
 of the person named in ①, appointed by (name of court): _____

Case No.: _____

c. ☐ Other (name) _____

(Show this person's legal authority to make this request on an attached sheet of paper. Write "Attachment 3c—Information About Person Requesting Protective Order" for a title. You may use form [MC-025](#), Attachment.)

4 Contact Information

Contact information for the person asking the court for protection

a. Your Lawyer (if you have one for this case)

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address (If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. The person in ① does not have to give telephone, fax, or email.)

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

This is not a Court Order.



5 Description of Protected Person

The person named in 1 (check a or b):

- a. ☐ Is age 65 or older and a resident of California.
- b. ☐ Is a resident of California and an adult under age 65. This person has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights. (Briefly describe limitations on the attached sheet of paper or form MC-025. Write "Attachment 5b—Description of Protected Person" for a title.)

6 Additional Protected Persons

- a. Are you asking for protection for any other family or household members or for the conservator of the elder or dependent adult listed in 1? ☐ Yes ☐ No (If yes, list them):

Full Name	Gender	Age	Relation to person in 1?	Lives with person in 1?
				<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No
				<input type="checkbox"/> Yes <input type="checkbox"/> No

- ☐ Check here if there are more persons. Attach a sheet of paper and write "Attachment 6a—Additional Protected Persons" for a title. You may use form MC-025, Attachment.

- b. Why do these people need protection? (Explain below):

- ☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 6b—Why Others Need Protection" for a title.

7 Relationship of Parties

How does the person in 1 know the person in 2? (Explain below):

- ☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 7—Relationship of Parties" for a title.

This is not a Court Order.



8 Description of Abuse

a. Abuse means either:

- (1) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering; or
- (2) The withholding by a caretaker of goods or services that are necessary to avoid physical harm or mental suffering.

b. Tell the court about the last time the person in (2) abused the person in (1).

(1) When did it happen? *(Provide date or estimated date):* _____

(2) Who else was there?

(3) Describe what happened below.

☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 8b(3)—Describe Abuse" for a title.

(4) Was the abuse **solely financial abuse** unaccompanied by force, threat, harassment, intimidation, or any other form of abuse?

☐ Yes, only financial abuse. ☐ No, the abuse included other forms of abuse described above.

(5) Did the person in (2) use or threaten to use a gun or any other weapon?

☐ Yes ☐ No *(If yes, explain below):*

☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 8b(5)—Use of Weapons" for a title.

(6) Was the person in (1) harmed or injured as a result of the acts of abuse described above?

☐ Yes ☐ No *(If yes, explain below):*

☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 8b(6)—Harm or Injury" for a title.

(7) Did the police come? ☐ Yes ☐ NoIf yes, did they give the person in (1) or the person in (2) an Emergency Protective Order? ☐ Yes ☐ NoIf yes, the order protects *(check all that apply):*

☐ the person in (1) ☐ the person in (2) ☐ the persons in (6).

*(Attach a copy of the order if you have one.)***This is not a Court Order.**

- 8 c. Is the person in 2 a care custodian who deprived the person in 1 of (kept from the person, did not allow the person to have or receive, or did not provide the person with) goods or services that the person needed to avoid physical harm or mental suffering? ☐ Yes ☐ No
(If yes, describe below what the person was deprived of and how that affected the person):
☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 8c—Deprivation by Care Custodian" for a title.

- d. Has the person in 2 abused the person in 1 at other times?
☐ Yes ☐ No *(If yes, describe prior incidents and provide dates below):*
☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 8d—Previous Abuse" for a title.

9 Venue

Why are you filing in this county? *(Check all that apply):*

- a. ☐ The person in 2 lives in this county.
 b. ☐ The person in 1 was abused by the person in 2 in this county.
 c. ☐ Other *(specify)*: _____

10 Other Court Cases

- a. Has the person in 1 or any of the persons named in 6 been involved in another court case with the person in 2? ☐ No ☐ Yes *(If yes, specify the kind of each case and indicate where and when each was filed):*

Kind of Case	Filed in (County/State)	Year Filed	Case Number (if known)
(1) <input type="checkbox"/> Elder or Dependent Adult Abuse	_____	_____	_____
(2) <input type="checkbox"/> Civil Harassment	_____	_____	_____
(3) <input type="checkbox"/> Domestic Violence	_____	_____	_____
(4) <input type="checkbox"/> Divorce, Nullity, Legal Separation	_____	_____	_____
(5) <input type="checkbox"/> Paternity, Parentage, Child Custody	_____	_____	_____
(6) <input type="checkbox"/> Eviction	_____	_____	_____
(7) <input type="checkbox"/> Guardianship	_____	_____	_____
(8) <input type="checkbox"/> Workplace Violence	_____	_____	_____
(9) <input type="checkbox"/> Small Claims	_____	_____	_____
(10) <input type="checkbox"/> Criminal	_____	_____	_____
(11) <input type="checkbox"/> Other <i>(specify)</i> : _____	_____	_____	_____

- b. Are there now any protective or restraining orders in effect relating to the person in 1 or any of the persons named in 6 and the person in 2? ☐ No ☐ Yes *(If yes, attach a copy if you have one.)*

This is not a Court Order.



Check the orders you want. ☒**11 ☐ Personal Conduct Orders**

I ask the court to order the person in **(2)** **not** to do any of the following things to the person in **(1)** or to any person to be protected listed in **(6)**:

- a. ☐ Physically abuse, financially abuse, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, harass, destroy the personal property of, or disturb the peace of the person.
- b. ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by email, by text message, by fax, or by other electronic means.
- c. ☐ Other (*specify*):
☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 11c—Other Personal Conduct Orders" for a title.*

*The person in **(2)** will be ordered not to take any action to get the addresses or locations of any protected person unless the court finds good cause not to make the order.*

12 ☐ Stay-Away Orders

- a. I ask the court to order the person in **(2)** to stay at least _____ yards away from (*check all that apply*):

- (1) ☐ The elder or dependent adult in **(1)**.
- (2) ☐ The persons in **(6)**.
- (3) ☐ The home of the elder or dependent adult.
- (4) ☐ The job or workplace of the elder or dependent adult.
- (5) ☐ The vehicle of the elder or dependent adult.
- (6) ☐ Other (*specify*): _____

- b. If the court orders the person in **(2)** to stay away from all the places listed above, will he or she still be able to get to his or her home, school, or job? ☐ Yes ☐ No (*If no, explain below*):

- ☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 12b—Stay-Away Orders" for a title.*

This is not a Court Order.



13 ☐ **Move-Out Order**

I ask the court to order the person in (2) to move out from and not return to the residence at (address):

The person in (1) will suffer physical or emotional harm if the person in (2) does not leave the residence. The person in (2) is not named in the title or lease of the residence, either alone or with others beside the person in (1).

☐ I ask for this move-out order right away to last until the hearing, because:

- a. The person in (2) assaulted or threatened the person in (1); and
- b. The person in (1) has the right to live at the above residence. (Explain below):

☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 13b—My Right to Residence" for a title.

14 ☐ **Order for Counseling or Anger Management Courses**

i This item is only available in instances of alleged physical abuse or deprivation of care, not in cases with only alleged financial abuse.

- a. I request the person in item (2) be ordered by the court to attend clinical counseling or anger management courses provided by a professional (a counselor, psychologist, psychiatrist, therapist, clinical social worker, or mental or behavioral health professional licensed in the State of California to provide counseling or anger management courses).
- b. Explain why you are requesting an order that the person in item (2) attend clinical counseling or anger management courses.

☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 14b—Counseling or Anger Management" for a title.

15 **Firearms (Guns), Firearm Parts, and Ammunition**

Does the person in (2) own or possess any firearms (guns), firearm parts, or ammunition? This includes firearm receivers and frames, and any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531). ☐ Yes ☐ No ☐ I don't know

Unless the abuse is only financial, if the judge grants a protective order, the person in (2) will be prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive firearms (guns), firearm parts, and ammunition while the protective order is in effect. The person in (2) will also be ordered to turn in to law enforcement, or sell to or store with a gun dealer, any firearms (guns) and firearm parts within their immediate possession or control. If an order is granted, the person in (2) will also be prohibited from owning, possessing, or buying body armor and would have to relinquish any they have.

This is not a Court Order.



16 ☐ **Temporary Restraining Order**

I request that a Temporary Restraining Order (TRO) be issued against the person in (2) to last until the hearing. I am presenting form EA-110, *Temporary Restraining Order*, for the court's signature together with this *Request*.

Has the person in (2) been told that you were going to go to court to seek a TRO against them?

☐ Yes ☐ No (If you answered no, explain why below):

☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 16—Temporary Restraining Order" for a title.

17 ☐ **Request to Give Less Than Five Days' Notice of Hearing**

You must have your papers personally served on the person in (2) at least five days before the hearing, unless the court orders a shorter time for service. (Read form EA-200-INFO, What Is "Proof of Personal Service"?, to learn about serving legal papers. Form EA-200, Proof of Personal Service, may be used to show the court that the papers have been served.)

If you want there to be less than five days between service and the hearing, explain why:

☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 17—Request to Give Less Than Five Days' Notice" for a title.

18 ☐ **Debts Caused by Financial Abuse**

You can ask the judge to decide at the hearing that certain debts or bills you have were caused by the person in (2)'s financial abuse. This may help you defend against the debt if you are sued in another case.

a. If you want the judge to make this special finding, list the debts or bills you have that were caused by the person in (2)'s financial abuse.

☐ Check here if you want to list additional debts or bills that were caused by financial abuse. You can attach form MC-025 and write "Attachment 18a—Additional Debts" for a title.

	Money Owed To	For	Amount
(1)	_____	_____	\$ _____
(2)	_____	_____	\$ _____
(3)	_____	_____	\$ _____

b. Describe what the person in (2) did to cause the debts and bills that you listed above. Provide as much detail as you can about the person in (2)'s financial abuse.

☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 18b—How Debt Was Incurred" for a title.

This is not a Court Order.



19 ☐ **Lawyer's Fees and Costs**

I ask the court to order payment of my ☐ lawyer's fees ☐ court costs.

The amounts requested are:

<u>Item</u>	<u>Amount</u>	<u>Item</u>	<u>Amount</u>
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

☐ Check here if there are more items. Put the items and amounts on the attached sheet of paper or form MC-025 and write "Attachment 19—Lawyer's Fees and Costs" for a title.

20 ☐ **Possession and Protection of Animals**

I ask the court to order the following:

- a. ☐ That the person in **(1)** be given the sole possession, care, and control of the animals listed below, which they own, possess, lease, keep, or hold, or which reside in their household.

(Identify animals by, e.g., type, breed, name, color, sex.)

I request sole possession of the animals because (specify good cause for granting order):

- ☐ Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 20a—Possession of Animals" for a title.

- b. ☐ That the person in **(2)** must stay at least _____ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of, the animals listed above.

21 **No Fee to Serve Orders** If you want the sheriff or marshal to serve (notify) the person in **(2)** about the orders for free, ask the court clerk what you need to do.

This is not a Court Order.



22 ☐ **Additional Orders Requested**

I ask the court to make the following additional orders (*specify*):

☐ *Check here if there is not enough space for your answer. Put your complete answer on the attached sheet of paper or form MC-025 and write "Attachment 22—Additional Orders Requested" for a title.*

23 Number of pages attached to this form, if any: _____

Date: _____

Lawyer's name (if any)_____
Lawyer's signature

I declare under penalty of perjury under the laws of the State of California that the information above and on all attachments is true and correct.

Date: _____

Type or print your name_____
Signature of person making this request

This is not a Court Order.

Person in ① must complete items ①, ②, and ③ only.

① Protected Elder or Dependent Adult

a. Full Name: _____

☐ Person requesting protection for the elder or dependent adult, if different (person named in item ③ of form EA-100):

Full Name: _____

Lawyer for person named above (if any, for this case):

Name: _____ State Bar No.: _____

Firm Name: _____

b. Your Address (If you have a lawyer, give your lawyer's information. If you do not have a lawyer and want to keep your home address private, you may give a different mailing address instead. You do not have to give telephone, fax, or email.):

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Email Address: _____

Fill in court name and street address:

Superior Court of California, County of _____

Court fills in case number when form is filed.

Case Number: _____

② Restrained Person

(Give all the information you know. Information with a star (*) is required to add this order to the California police database. If age is unknown, give an estimate.)

*Full Name: _____ *Age: _____ Date of Birth: _____
 *Race: _____ Height: _____ Weight: _____ Hair Color: _____ Eye Color: _____
 *Gender: ☐ M ☐ F ☐ Nonbinary Home Address: _____
 City: _____ State: _____ Zip: _____
 Relationship to Protected Person: _____

③ Additional Protected Persons

In addition to the elder or dependent adult named in ①, the following family or household members or conservator of that person are protected by the temporary orders indicated below:

Full Name	Gender	Age	Household Member?	Relation to Protected Person
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____

☐ Check here if there are additional protected persons. List them on an attached sheet of paper and write "Attachment 3—Additional Protected Persons" as a title. You may use form [MC-025](#), Attachment.

④ Expiration Date

This Order expires at the end of the hearing scheduled for the date and time below:

Date: _____ Time: _____ ☐ a.m. ☐ p.m.

This is a Court Order.



To the Person in ② :

The court has issued the temporary orders checked as granted below. If you do not obey these orders, you can be arrested and charged with a crime. You may have to go to jail for up to one year, pay a fine of up to \$1,000, or both.

⑤ Personal Conduct Orders

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows:**

a. You must **not** do the following things to the elder or dependent adult named in ①

☐ and to the other protected persons listed in ③:

- (1) ☐ Physically abuse, financially abuse, intimidate, molest, attack, strike, stalk, threaten, assault (sexually or otherwise), hit, harass, destroy personal property of, or disturb the peace of the person.
- (2) ☐ Contact the person, either directly or indirectly, in **any** way, including, but not limited to, in person, by telephone, in writing, by public or private mail, by interoffice mail, by email, by text messages, by fax, or by other electronic means.
- (3) ☐ Take any action to obtain the person's address or location. If this item ③ is not checked, the court has found good cause not to make this order.
- (4) ☐ Other (*specify*):
☐ Other personal conduct orders are attached at the end of this Order on Attachment 5a(4).

b. Peaceful written contact through a lawyer or a process server or other person for service of legal papers related to a court case is allowed and does not violate this order. However, you may have your papers served by mail on the person in ①.

⑥ Stay-Away Orders

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows:**

a. You **must** stay at least _____ yards away from (*check all that apply*):

- (1) ☐ The elder or dependent adult in ①
- (2) ☐ Each person in ③
- (3) ☐ The home of the elder or dependent adult
- (4) ☐ The job or workplace of the elder or dependent adult
- (5) ☐ The vehicle of the person in ①
- (6) ☐ Other (*specify*):

b. This stay-away order does not prevent you from going to or from your home or place of employment.

⑦ Move-Out Order

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows:**

You must immediately move out from and not return to (*address*):

This is a Court Order.



8 No Firearms (Guns), Firearm Parts, or Ammunition☐ **Not Issued** (financial abuse only)☐ **Granted as Follows:**

This order must be granted unless only financial abuse is alleged.

a. You cannot own, possess, have, buy or try to buy, receive or try to receive, or in any other way get any prohibited items listed in b below.

b. **Prohibited items are:**

(1) Firearms (guns);

(2) Firearm parts, meaning receivers, frames, or any item that may be used as or easily turned into a receiver or frame (see Penal Code section 16531); and

(3) Ammunition.

c. You must:

(1) Sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any firearms (guns) and firearm parts in your immediate possession or control. This must be done within 24 hours of being served with this Order.

(2) File a receipt with the court within 48 hours of receiving this Order that proves that your firearms (guns) and firearm parts have been turned in, sold, or stored. (You may use form [EA-800](#), *Receipt for Firearms and Firearm Parts*, for the receipt.)

d. ☐ The court has received information that you own or possess a firearm (gun), firearm parts, or ammunition.

9 No Body Armor

If the order in **8** is granted, you cannot own, possess, or buy body armor (defined in Penal Code section 16288). You must relinquish any body armor you have in your possession.

10 Financial Abuse

This case ☐ does **not** ☐ does involve **solely financial abuse** unaccompanied by force, threat, harassment, intimidation, or any other form of abuse.

11 Possession and Protection of Animals☐ **Not Requested**☐ **Denied Until the Hearing**☐ **Granted as Follows** (specify):

a. ☐ The person in **1** is given the sole possession, care, and control of the animals listed below, which are owned, possessed, leased, kept, or held by him or her, or reside in his or her household.

(Identify animals by, e.g., type, breed, name, color, sex.)

b. ☐ The person in **2** must stay at least _____ yards away from, and not take, sell, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of, the animals listed above.

This is a Court Order.



12 Other Orders

☐ **Not Requested** ☐ **Denied Until the Hearing** ☐ **Granted as Follows** *(specify):*

☐ Additional orders are attached at the end of this Order on Attachment 12.

To the Person in 1 :**13 Mandatory Entry of Order Into CARPOS Through CLETS**

This Order must be entered into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). *(Check one):*

- a. ☐ The clerk will enter this Order and its proof of service form into CARPOS.
- b. ☐ The clerk will transmit this Order and its proof of service form to a law enforcement agency to be entered into CARPOS.
- c. ☐ By the close of business on the date that this Order is made, the petitioner or the petitioner's lawyer should deliver a copy of the Order and its proof of service form to the law enforcement agencies listed below to enter into CARPOS:

Name of Law Enforcement Agency

Address (City, State, Zip)

☐ Additional law enforcement agencies are listed at the end of this Order on Attachment 13.

14 No Fee to Serve (Notify) Restrained Person

If the sheriff or marshal serves this Order, he or she will do it for free.

15 Number of pages attached to this Order, if any: _____

Date: _____

Judicial Officer

This is a Court Order.

Warnings and Notices to the Restrained Person in ②

You Cannot Have Firearms (Guns), Firearm Parts, or Ammunition

If the court grants the orders in item ⑧, you cannot own, have, possess, buy or try to buy, receive or try to receive, or otherwise get any prohibited items listed in item 8b on page 3 while this Order is in effect. If you do, you can go to jail and pay a \$1,000 fine. You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any firearms (guns) and firearm parts that you have or control as stated in item ⑧. The court will require you to prove that you did so.

Notice Regarding Nonappearance at Hearing and Service of Order

If you have been personally served with this Temporary Restraining Order and form EA-109, *Notice of Court Hearing*, but you do not appear at the hearing either in person or by a lawyer, and a restraining order that does not differ from this order except for the expiration date is issued at the hearing, a copy of the order will be served on you by mail at the address in item ②.

If this address is not correct or you wish to verify that the temporary restraining order was converted into a restraining order at the hearing without substantive change, or to find out the duration of the order, contact the clerk of the court.

After You Have Been Served With a Restraining Order

- Obey all the orders.
- Read form [EA-120-INFO](#), *How Can I Respond to a Request for Elder or Dependent Adult Abuse Restraining Orders?*, to learn how to respond to this Order.
- If you want to respond, fill out form [EA-120](#), *Response to Request for Elder or Dependent Adult Abuse Restraining Orders*, and file it with the court clerk. You do not have to pay any fee to file your response.
- You must have form EA-120 served on the person in ① (the person asking the court for protection of the elder or dependent adult or the elder or dependent adult if no other person is named in that item), or that person's attorney, by mail. You cannot do this yourself. The person who does the mailing should complete and sign form [EA-250](#), *Proof of Service of Response by Mail*. File the completed proof of service with the court clerk before the hearing date or bring it with you to the hearing.
- In addition to the response, you may file and have declarations served signed by you and other persons who have personal knowledge of the facts. You may use form [MC-030](#), *Declaration*, for this purpose. It is available from the clerk's office at the court shown on page 1 of this form or at www.courts.ca.gov/forms. If you do not know how to prepare a declaration, you should see a lawyer.
- Whether or not you file a response, you should attend the hearing. If you have any witnesses, they must also go to the hearing.
- At the hearing, the judge can make restraining orders against you that last for up to five years. Tell the judge why you disagree with the orders requested.

Instructions for Law Enforcement

Enforcing the Restraining Order

This order is enforceable by any law enforcement agency that has received the order, is shown a copy of the order, or has verified its existence on the California Restraining and Protective Order System (CARPOS). If the law enforcement agency has not received proof of service on the restrained person, the agency must advise the restrained person of the terms of the order and then must enforce it. Violations of this order are subject to criminal penalties.

This is a Court Order.



Start Date and End Date of Orders

This order *starts* on the date next to the judge's signature on page 4. The order *ends* on the expiration date in item ④ on page 1.

Arrest Required if Order Is Violated

If an officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 13701(b).) A violation of the order may be a violation of Penal Code section 166 or 273.6. Agencies are encouraged to enter violation messages into CARPOS.

Notice/Proof of Service

The law enforcement agency must first determine if the restrained person had notice of the order. Consider the restrained person "served" (given notice) if (Pen. Code, § 836(c)(2)):

- The officer sees a copy of the proof of service or confirms that the proof of service is on file; or
- The restrained person was informed of the order by an officer.

An officer can obtain information about the contents of the order and proof of service in CARPOS. If proof of service on the restrained person cannot be verified, the agency must advise the restrained person of the terms of the order and then enforce it.

If the Protected Person Contacts the Restrained Person

Even if the protected person invites or consents to contact with the restrained person, this order remains in effect and must be enforced. The protected person cannot be arrested for inviting or consenting to contact with the restrained person. The order can be changed only by another court order. (Pen. Code, § 13710(b).)

Conflicting Orders—Priorities for Enforcement

If more than one restraining order has been issued protecting the protected person from the restrained person, the orders must be enforced in the following priority (see Pen. Code, § 136.2 and Fam. Code, §§ 6383(h)(2), 6405(b)):

1. *Emergency Protective Order (EPO)*: If one of the orders is an *Emergency Protective Order* (form EPO-001), provisions (e.g., stay-away order) that are more restrictive than in the other restraining/protective orders must be enforced. Provisions of another order that do not conflict with the EPO must be enforced.
2. *No-Contact Order*: If a restraining/protective order includes a no-contact order, the no-contact order must be enforced. Item 5a(2) is an example of a no-contact order.
3. *Criminal Protective Order (CPO)*: If none of the orders include an EPO or a no-contact order, the most recent CPO must be enforced. (Fam. Code, §§ 6383(h)(2) and 6405(b).) Additionally, a CPO issued in a criminal case involving charges of domestic violence, Penal Code sections 261, 261.5, or former 262, or charges requiring sex offender registration must be enforced over any civil court order. (Pen. Code, § 136.2(e)(2).) All provisions in the civil court order that do not conflict with the CPO must be enforced.
4. *Civil Restraining Orders*: If there is more than one civil restraining order (e.g., domestic violence, juvenile, elder abuse, civil harassment), then the order that was issued last must be enforced. Provisions that do not conflict with the most recent civil restraining order must be enforced.

(Clerk will fill out this part.)

—Clerk's Certificate—

Clerk's Certificate
[seal]

I certify that this *Temporary Restraining Order* is a true and correct copy of the original on file in the court.

Date: _____ Clerk, by _____, Deputy

This is a Court Order.

Chapter 8. Interstate Jurisdiction, Transfer, and Recognition: California Conservatorship Jurisdiction Act (§ 1980 to § 2055) Tribal Provisions

§ 2003. Transfer involving court of California tribe

If a conservatorship is transferred under this article from a court of this state to the court of a California **tribe** or from the court of a California **tribe** to a court of this state, the order that provisionally grants the transfer may expressly provide that specified powers of the conservator will not be transferred. Jurisdiction over the specified powers will be retained by the transferring state and will not be included in the powers that are granted to the conservator in the state that accepts the transfer.

§ 2019. Registration of California tribal orders

Notwithstanding any other provision of this article:

- (a) A conservatorship order of a court of a California **tribe** can be registered under [Section 2011](#), [2012](#), or [2013](#), regardless of whether the conservatee resides in California.
- (b) The effect of a conservatorship order of a court of a California **tribe** that is registered under [Section 2011](#), [2012](#), or [2013](#) is not contingent on whether the conservatee resides in California.
- (c) [Paragraphs \(3\) and \(4\) of subdivision \(a\) of Section 2017](#) do not apply to a conservatorship order of a court of a California **tribe**.

Article 6. Federally Recognized Indian Tribe

§ 2031. Definitions

For the purposes of this chapter:

- (a) “California tribe” means an Indian tribe with jurisdiction that has tribal land located in California.
- (b) “Indian tribe with jurisdiction” means a federally recognized Indian tribe that has a court system that exercises jurisdiction over proceedings that are substantially equivalent to conservatorship proceedings.
- (c) “Tribal land” means land that is, with respect to a specific Indian tribe and the members of that tribe, “Indian country” as defined in [Section 1151 of Title 18 of the United States Code](#).

§ 2032. Application of Article 2

Article 2 (commencing with [Section 1991](#)) does not apply to a proposed conservatee who is a member of an Indian tribe with jurisdiction.

§ 2033. Proposed conservatees who are tribal members; dismissal of petition; factors considered

- (a) If a petition for the appointment of a conservator has been filed in a court of this state and a conservator has not yet been appointed, any person entitled to notice of a hearing on the petition may move to dismiss the petition on the grounds that the proposed conservatee is a member of an Indian tribe with jurisdiction. The petition shall state the name of the Indian tribe.
- (b) If, after communicating with the named tribe, the court of this state finds that the proposed conservatee is a member of an Indian tribe with jurisdiction, it may grant the motion to dismiss if it finds that there is good cause to do so. If the motion is granted, the court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a conservator be filed promptly in the tribal court.
- (c) In determining whether there is good cause to grant the motion, the court may consider all relevant factors, including, but not limited to, the following:
 - (1) Any expressed preference of the proposed conservatee.
 - (2) Whether abuse, neglect, or exploitation of the proposed conservatee has occurred or is likely to occur and which state could best protect the proposed conservatee from the abuse, neglect, or exploitation.
 - (3) The length of time the proposed conservatee was physically present in or was a legal resident of this or another state.
 - (4) The location of the proposed conservatee's family, friends, and other persons required to be notified of the conservatorship proceeding.
 - (5) The distance of the proposed conservatee from the court in each state.
 - (6) The financial circumstances of the estate of the proposed conservatee.
 - (7) The nature and location of the evidence.
 - (8) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence.
 - (9) The familiarity of the court of each state with the facts and issues in the proceeding.
 - (10) If an appointment were made, the court's ability to monitor the conduct of the conservator.
 - (11) The timing of the motion, taking into account the parties' and court's expenditure of time and resources.
- (d) Notwithstanding subdivision (b), the court shall not grant a motion to dismiss pursuant to this section if the tribal court expressly declines to exercise its jurisdiction with regard to the proposed conservatee.