



JUDICIAL COUNCIL OF CALIFORNIA

TRIBAL COURT-STATE COURT FORUM

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TRIBAL COURT-STATE COURT FORUM

NOTICE AND AGENDA OF OPEN MEETING

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1) and (e)(1))

THIS MEETING IS BEING CONDUCTED BY ELECTRONIC MEANS

THIS MEETING IS BEING RECORDED

Date: August 16, 2018
Time: 12:15-1:15 p.m.
Public Call-in Number: 877-820-7831; Passcode; passcode 4133250 (Listen Only)

Meeting materials will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Members of the public seeking to make an audio recording of the meeting must submit a written request at least two business days before the meeting. Requests can be e-mailed to forum@jud.ca.gov.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

Call to Order and Roll Call

Approval of Minutes

Approve minutes of the June 7, 2018, Tribal Court-State Court Forum meeting.

II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(1))

This meeting will be conducted by electronic means with a listen only conference line available for the public. As such, the public may submit comments for this meeting only in writing. In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to forum@jud.ca.gov or mailed or delivered to 455 Golden Gate Avenue, San Francisco, CA 94102, attention: Ann Gilmour. Only written comments received by 12:15 p.m. on August 15, 2018 will be provided to advisory body members prior to the start of the meeting.

III. INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

Info 1

Cochairs Report

- Approval of Minutes for June 7, 2018 Meeting
- Update on [nomination](#)/appointment process

Info 2

StrongHearts Native Helpline

Presenter: Caroline LaPorte, Senior Native Affairs Policy Advisor for NIWRC/StrongHearts

Info 3

Peer Court

*Presenter: Hon. Sunshine Sykes, Judge, Superior Court of California, County of Riverside
Hon. Devon Lomayesva, Chief Judge, Intertribal Court of Southern California*

Info 4

VOCA Trainings

Presenter: Hon. Mark Radoff, Chief Judge, Chemehuevi Tribal Court

Info 5

Legislative Update

Presenter: Andi Liebenbaum, Attorney, Judicial Council Governmental Affairs

Info 6

Recent and Upcoming Conferences

Presenter: Vida Castaneda

IV. ADJOURNMENT

Adjourn



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TRIBAL COURT-STATE COURT FORUM

MINUTES OF OPEN MEETING

June 7, 2018
12:15-1:15 p.m.

Advisory Body Members Present: *Hon. Abby Abinanti, Co-chair, Hon. Dennis M. Perluss, Co-chair, Hon. April Attebury, Hon. Richard Blake, Hon. Hilary A. Chittick, Hon. Gail Dekreon, Hon. Leonard Edwards(Ret.), Ms. Heather Hostler, Hon. Mark Juhas, Hon. Lawrence C. King, Hon. Patricia Lenzi, Hon. Devon Lomayesva, Hon. Lester Marston, Hon. Mark Radoff, Hon. David Riemenschneider, Hon. John Sugiyama, Hon. Sunshine Sykes, Hon. Juan Ulloa, Hon. Claudette White, Hon. Christine Williams, and Hon. Christopher Wilson*

Advisory Body Members Absent: *Hon. Kimberly Gaab, Hon. Susanne Kingsbury, Hon. William Kockenmeister, Hon. Anthony Lee, and Hon. Joseph Wiseman*

Others Present: *Ms.Carolynn Bernabe, Ms. Vida Castaneda, Ms. Charlene Depner, Ms. Audrey Fancy, Ms. Ann Gilmour, Ms. Bonnie Hough, Ms. Andi Liebenbaum, Ms. Joy Ricardo, Mr. Greg Tanaka, and Mr. Don Will*

OPEN MEETING

Call to Order and Roll Call

The co-chairs called the meeting to order at 12:18 p.m.

Approval of Minutes

The Forum approved the April 12, 2018 meeting minutes.

DISCUSSION AND ACTION ITEMS (ITEMS 1-7)

Item 1

Cochairs Report

- Update on [nomination](#)/appointment process
The nomination period is now closed awaiting Chief Justice's official appointments for September.

Item 2

[Restorative Justice and Government to Government Collaboration in Alaska: A Model for California](#)

Presenter: Hon. Eric Smith, Ret., Alaska Superior Court

The Alaska Supreme Court has implemented Criminal Rule 11(i) and Delinquency Rule 23(f), which authorize judges to refer cases to tribes and other justice organizations for recommendations as to the appropriate sentence or disposition. Retired Superior Court Judge Eric Smith was asked by the Court to implement these rules. Judge Smith worked with tribes and

proposed an agreement, called a “Plan”, by which the tribe and the court system agree to a formal and binding procedure for the referral process.

The basic model is as follows:

- the tribe will monitor the court calendar on the court’s website to learn if member will be arraigned on a case;
- if tribe is interested in the case, the court will send the relevant documents to the tribe and will refer the matter to the tribe;
- if the parties agree, the court will set sentencing out long enough for the tribe to conduct the proceeding;
- the tribe will conduct the proceeding and will provide a formal recommendation to the court as to the sentence or disposition;
- the court will carefully and respectfully consider the recommendation and impose sentence.

The court system has signed 15 separate formal [Plans](#) between the court and the tribes. The court system has also developed a set of forms that the tribes can use for filing the notifications and sentencing recommendations. For further information, Judge Smith can be contacted at esmith@akcourts.us

Item 3

Update on RUPRO Items–Pro Hac Vice and Remote Access

Presenter: Ann Gilmour

The comment period ends June 8th. The Pro Hac Vice proposal received two comments from Yurok Tribe and the Chickisaw Nation supporting the proposal with no changes. No major revisions to the proposal are anticipated. Remote access proposal has received comments, but not on tribal related issues.

Item 4

Legislative Update

*Presenter: Andi Liebenbaum, Attorney, Judicial Council’s Governmental Affairs
Heather Hostler, Director, California Department of Social Services (CDSS),
Office of Tribal Affairs*

AB 3176 Indian children. This bill, supported by the Judicial Council (JC), implements recent changes in federal ICWA regulations and guidance, the JC directed staff to continue work with stakeholders on the areas of concern. After stakeholder discussions, the bill has been amended, and the concerns have been substantively addressed. JC worked with DCSS on the trailer bill to address issues around jurisdiction and tribal courts, how compatible the trailer bill with AB 3176. An effort spearheaded by DCSS to work with proponents of AB 3176. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required for a specified reason.

In addition to AB 3176, here are two bills introduced impacting the federal ICWA:

AB 3047 Court fees: waiver: Indian Child Welfare Act. This bill, supported by the JC, would waive the pro hac vice filing fee for attorneys representing tribe for child welfare matters. The original form has not been amended. It is on the consent calendar with the Assembly, hearing for next week at the Judiciary.

AB 3076 Indian child welfare: legal services. This bill, supported by the JC, would require the State Bar of California to administer grants to qualified legal services projects and qualified support centers for providing legal services to Indian tribes in child welfare matters. This bill has passed Assembly unanimously; Senate hearing not scheduled yet.

Item 5

U.C. Davis Law School–Tribal Justice Project

Presenter: Hon. Christine Williams, Chief Judge, Shingle Springs Rancheria Tribal Court and Director of the Tribal Justice Project

Ms. Jennifer Leal, a descendant of the Washoe and Mono Lake Paiute communities from northern California, is the Tribal Justice Project’s Program Administrator, a new project under Aoki Center for Critical Race and Nation Studies at UC Davis Law School, launched in March 2018. The project’s mission is to provide training and education to tribal court judges and personnel, enhance law school offering to students pursuing careers in Indian and policy law. The project supports tribal sovereignty, provides technical assistance for tribes and training for tribal court systems. The first training will be held at the Yurok Tribal Court on June 27-28, open to tribal court personnel and judges, community members interested in becoming a tribal court judge and learning more about working internal administration of courts. Tribal Court Symposium at UC Davis Law School will be held on September 27, which is California Indian Day.

Item 6

California Lawyers Association Family Law Section–Meeting at Shingle Springs Rancheria

Presenters: Hon. Christine Williams

Hon. Mark Juhas, Judge, Superior Court of California, County of Los Angeles

Chief Judge Christine Williams reported that Shingle Springs hosted the Family Law Section of the California Lawyers Association (formerly housed at the State Bar of California) on April 16. This was the first time this annual educational program has been hosted by a tribe on tribal lands. Shingle Springs was honored to be the first tribe to host the event. The goal was to reach out to include attorneys in rural areas and to introduce those attorneys to tribal lands and issues. The event was well attended and received. The session was very interactive. It included a tour of the tribal court and discussion of how tribal court and state court activities intersect. The event was a direct result of the relationships that have been built through the Forum, as Judge Juhas reached out and suggested that Judge Williams might like to host the event.

Item 7

Recent and Upcoming Conferences

Presenter: Vida Castaneda

- On April 13, the first ever Bay Area ICWA Symposium was held at the Judicial Council conference area in San Francisco. The symposium was a collaboration between local Bay Area Universities Title IV-E program coordinators, the Tribal State/Programs Unit and Casey

Family Programs. We had over 150 attendees there that included judges, attorneys, social workers, tribal community, students, service providers, and educators. The morning session included an invocation by local Ohlone tribal member Corrina Gould, keynote speech by Judge Abinanti, historical trauma panel featuring: Judge Williams, Corrina Gould, Michele Maas and Dr. Jolivette, a plenary by Stephen Pevar and an array of afternoon workshops focused on ICWA. We received an abundance of positive feedback and had many requests for the symposium to be held annually, which the planning committee has agreed to do. We will be highlighting the CalSWEC article about the symposium in our next Tribal Court-State Court Forum e-update for further information.

- June 4-6, the 25th Annual ICWA Conference was held at Graton Rancheria. This year's theme was "Weaving Traditions to Defend, Protect and Honor Indian Children, Families and Tribes". The conference featured many interesting and valuable ICWA related workshops and plenaries. Our Tribal/State Programs Unit participated on the panel "Protecting Tribal Children in California" and Forum members were on the "Judicial Systems Honoring Tribal Children, Families and Tribes: ICWA Compliance Through Innovation" panel. Each day provided great information and an opportunity to hear from incredible speakers we are considering having for our own upcoming events.

Next Forum call is August 16, 2018.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 1:15 p.m.

Pending approval by the advisory body on August 16, 2018.

Trust. Speak. Heal. Together.



STRONGHEARTS
Native Helpline

The StrongHearts Native Helpline is a culturally-appropriate, confidential service for Native Americans affected by domestic violence and dating violence.

We offer immediate support, crisis intervention, safety planning and referrals to culturally-appropriate services. Speak with a StrongHearts advocate at no cost by calling **1-844-7NATIVE (1-844-762-8483)** Monday through Friday from 9 a.m. to 5:30 p.m. CST when you are ready to reach out.



This project was supported by Grant Number 90EV0426 from the Administration on Children, Youth and Families, Family and Youth Services Bureau, U.S. Department of Health and Human Services. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the U.S. Department of Health and Human Services.

Call 1-844-7NATIVE (762-8483)
Visit strongheartshelpline.org

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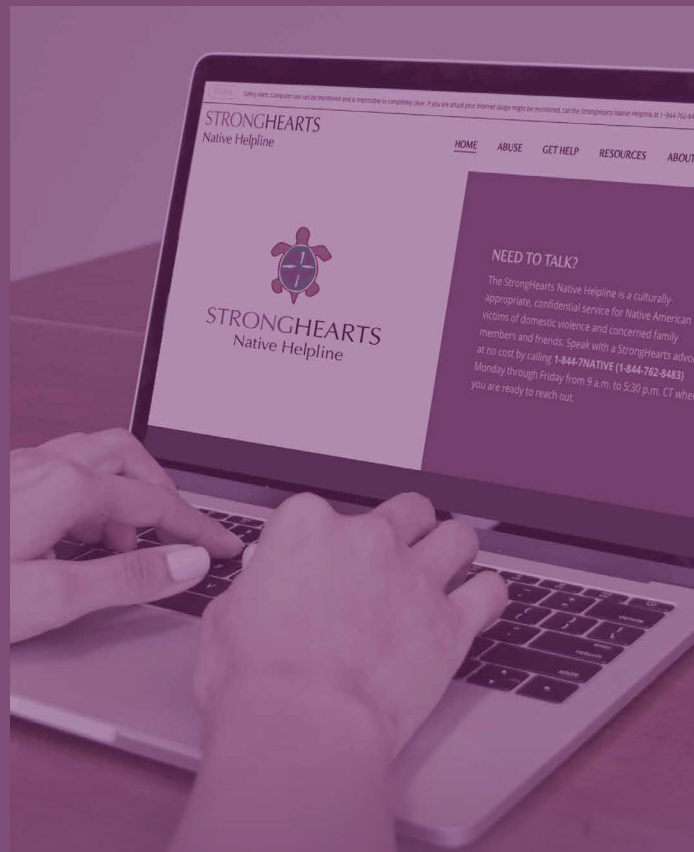
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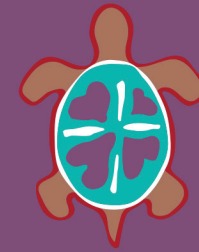
More than **4 in 5**
Native Americans have
experienced violence in
their lifetime.



More than **1 in 2 women**
and **1 in 3 men** have
experienced physical
violence by intimate
partners in their lifetime.



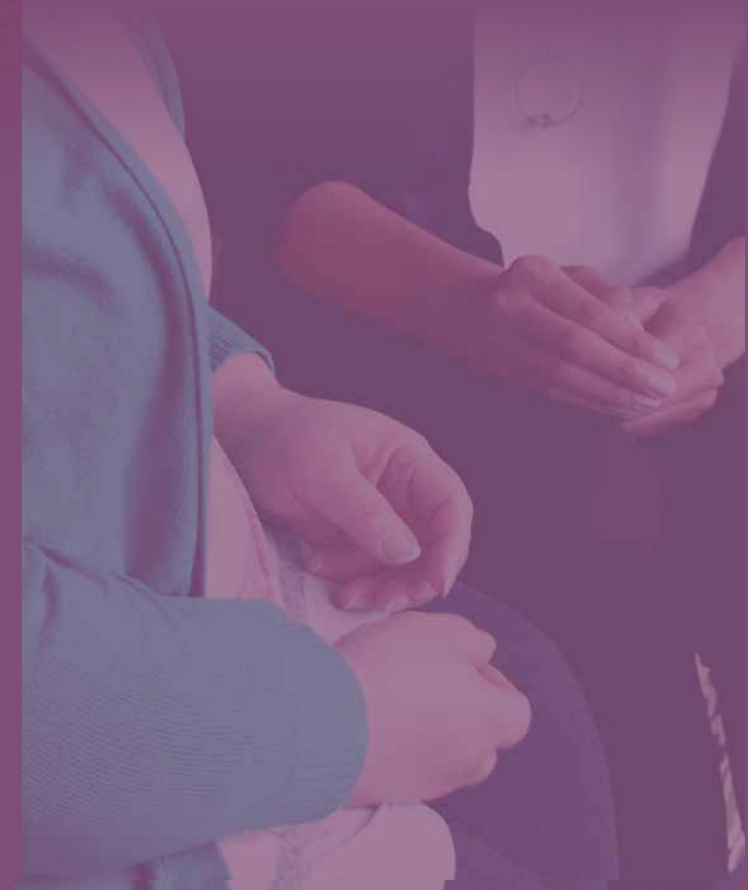
Visit **strongheartshelpline.org**
for more information about domestic
violence and dating violence,
getting help and staying safe.



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**2016 National Institute of Justice (NIJ) Research Report: Violence
Against American Indian and Alaska Native Women and Men*

*This project was supported by Grant Number 90EV0426
from the Administration on Children, Youth and Families,
Family and Youth Services Bureau, U.S. Department
of Health and Human Services. Its contents are solely
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represent the official views of the U.S. Department of
Health and Human Services.*

Domestic Violence, Defined

Domestic violence is a **pattern of behavior within a relationship that is used to gain or maintain power and control over an intimate partner.**

It can happen in relationships where couples are married, living together, dating or have a child together.

Does your partner ever...

- Call you names or put you down?
- Keep you from seeing or talking to family or friends?
- Push you, slap you, strangle you or hit you?
- Threaten to hurt or take away your children?
- Prevent you from honoring your beliefs?
- Control the money in the relationship?
- Prevent you from working or going to school?

If you answered 'yes' to even one of these questions, you may be in an unhealthy or abusive relationship.

Who We Are

Established in 2017, the **StrongHearts Native Helpline** is a culturally-appropriate, confidential service for Native Americans affected by domestic violence and dating violence. We take calls from Native American victims of domestic violence or dating violence, people who identify as abusive, or from anyone seeking help for someone else.

Knowledgeable advocates with a strong understanding of American Indian and Alaska Native cultures, as well as issues of tribal sovereignty and law, are available by phone Monday through Friday from 9 a.m. to 5:30 p.m. CST at **1-844-7NATIVE** (1-844-762-8483). Callers after hours will have the option to connect with the National Domestic Violence Hotline or to call back the next business day.

StrongHearts is a partnered effort, combining the technology and infrastructure of the National Domestic Violence Hotline with the National Indigenous Women's Resource Center's expertise and community connections with Native advocacy groups.

www.strongheartshelpline.org

What We Do

Our services are completely free and confidential. We offer:

- *Immediate support*
- *Crisis intervention*
- *Personalized safety planning*
- *Referrals to culturally-appropriate services*
- *Domestic violence education and information*

Domestic violence and dating violence can happen to anyone belonging to any tribe and are not limited to any age, class, religion, gender or sexual orientation.

If you or someone you know is in an abusive relationship, call StrongHearts at 1-844-7NATIVE (1-844-762-8483) Monday through Friday from 9 a.m. to 5:30 p.m. CST for support.

1-844-7NATIVE

www.strongheartshelpline.org



STRONGHEARTS
Native Helpline



STRONGHEARTS

Native Helpline

Domestic violence and dating violence are not Native American traditions, and neither is ever okay.

Speak with a StrongHearts advocate at no cost by calling **1-844-7NATIVE (1-844-762-8483)** Monday through Friday from 9 a.m. to 5:30 p.m. CST when you are ready to reach out.

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What is domestic violence?

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Find more information at strongheartshelpline.org.

Building Culturally Relevant Youth Courts in Tribal Communities

by Ada Pecos Melton

Introduction

Throughout the country, American Indian and Alaska Native (AI/AN)¹ tribes are responding to juvenile crime and delinquency among their youth by employing various philosophies, approaches, programs, and strategies. While AI/AN tribes have similar juvenile crime and delinquency problems as other American cities and towns do, tribal response to these issues can be very different from those applied by mainstream American justice systems. This is due in part to the different worldviews held by tribes that determine their response to crime in general, especially wrongdoing by their young people. American Indian policy created by Congress and the federal courts also influences the response to youth crime and delinquency in AI/AN communities.

The development process of a youth court program in tribal communities is very similar to that of youth courts being developed in the mainstream American justice system. However, there may be some issues that need to be addressed differently based on a tribal community's own culture, values, and philosophies. The purpose of this paper is to provide readers with a brief background of tribal justice systems and to provide an overview of some of the unique issues to consider when developing and implementing youth courts in AI/AN communities. The need for youth courts is discussed, and strategies to design culturally relevant youth courts in AI/AN communities are highlighted. Design and development of youth courts are discussed, reflecting on the history and evolution of tribal justice systems, along with the strengths and challenges for implementation and program sustainability in AI/AN communities.

Overview of Tribal Justice Systems

Indigenous justice systems existed before European contact, and many remain intact. Some tribes have replaced their indigenous systems with those based on American jurisprudence and structure. Still others have developed hybrid systems that blend indigenous and American laws and approaches to address youth crime and delinquency problems. As a result, contemporary tribal justice systems differ culturally, philosophically, and structurally from the American juvenile justice system and with each other. The structure of tribal governments generally determines the construct of problem solving forums among the Indian nations. Tribes have

unique governmental structures influenced by contact with the conquering nations that first encountered them, such as Spain, Mexico, and France, and later the United States. Through warfare and political might, these governments coerced societal, secular, and political changes within and among all the AI/AN tribes. Consequently, modern tribal courts are more westernized, applying American jurisprudence principles as opposed to those based in indigenous law and philosophy. However, many modern tribal courts, law enforcement, and corrections systems are still in their developmental stages.² In particular, juvenile justice systems based on American models lag behind the system used to handle adult offenders.

Jurisdiction

Tribal justice exists in a jurisdictional maze due to fluctuating and confusing federal Indian legislation and policies that have often strained relationships between states and Indian nations and with federal agencies. The establishment of the Court of Indian Offenses in 1883 and the unilateral imposition of law and order codes in 1884 significantly changed the structure of tribal justice systems from community controlled to government controlled systems. Federal policies such as the Major Crimes Act, the Indian Country Crimes Act, the Assimilative Crimes Act, and Public Law 83-280 increased government control by ending exclusive tribal jurisdiction and allowing the Federal government to have shared jurisdiction in certain crimes committed in Indian country.³ Adding to the structural and jurisdictional changes, the Indian Civil Rights Act placed limitations on the power and authority of tribal courts by limiting their sentencing powers. Tribal court sentences are limited to one year confinement and/or up to a \$5,000 fine. Since the late 1800s, these and other legislative acts and policies have contributed to the complexity of tribal jurisdiction and intergovernmental relationships. As a result, the federal government has an extensive role and responsibility in addressing crime, violence, and victimization in Indian communities.

Federal court decisions also had an effect and limited the enforcement of tribal laws on Indian lands. For example in *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, the Supreme Court ruled that Indian nations lacked criminal jurisdiction over non-Indians committing crimes in Indian country. A major problem created by the limitation on tribal criminal jurisdiction is that non-Indian misdemeanor crimes such as a non-Indian youth committing shoplifting, fighting, driving while impaired or underage drinking go without prosecution by any court. Often U.S. Attorneys are reluctant to prosecute these cases because they want to concentrate resources on crimes that are more serious. Nonetheless, these crimes pose great harm, especially in cases involving youth violence or child physical abuse by a non-Indian perpetrator. The lack of federal prosecution also contributes to the high number of Indian people victimized by non-Indian perpetrators.⁴ Generally, the basic question that needs to be resolved in criminal and juvenile delinquency cases in Indian country is which mix or level of government assumes jurisdiction: the federal, state, or tribal governments? Four classifications of defendant/

victim and two classifications for defendant/victimless crimes are possible (see Table 1).⁵ It also involves the interrelationship of three factors:

1. Personal jurisdiction—what persons are subject to the authority of tribal courts (Indian/non-Indian);
2. Territorial jurisdiction—over what land area tribal courts may exercise authority; and
3. Subject matter jurisdiction—the particular statute violated that outlines what conduct is punishable as a criminal or juvenile offense by tribal courts.

Table 1: Summary Table of Criminal Jurisdiction in Indian Country

Persons Involved	Federal Jurisdiction	Tribal Jurisdiction	State Jurisdiction
Indian Offender -v.- Indian Victim	Major Crimes Act, the United States can prosecute 16 listed offenses. Among these, burglary, involuntary sodomy, and incest are defined and punished in accordance with Federal law.	Tribal courts may have concurrent jurisdiction over crimes under the Major Crimes Act. For all other offenses, tribal courts have <i>sole</i> jurisdiction (except where federal statute specifically provides otherwise).	None except under P.L. 280 as amended, or other Federal statute or by tribal vote pursuant to 25 U.S.C.§1321. The tribe <i>may</i> retain concurrent jurisdiction.
Indian Offender -v.- Non-Indian Victim	Major Crimes Act General Crimes Act Assimilative Crimes Act	Tribal courts may have concurrent jurisdiction over crimes under the Major Crimes Act. They do have concurrent jurisdiction over offenses which the U.S. can prosecute under the General Crimes Act. Except for major crimes, tribes may preempt federal prosecution. For any other offenses (defined by tribal codes), tribal courts have exclusive jurisdiction.	Same as above.
Indian Offender Victimless Crime	The United States probably can prosecute under the General Crimes Act as explained above or under the Assimilative Crimes Act.	Same as above.	Same as above.

Continued on page 68

Persons Involved	Federal Jurisdiction	Tribal Jurisdiction	State Jurisdiction
Non-Indian Offender -v- Indian Victim	General Crimes Act, plus a substantive offense defined by Federal statute or a substantive offense defined by state law incorporated by the Assimilative Crimes Act.	Tribal courts have no jurisdiction to prosecute non-Indians, unless Congress delegates such power to them.	Probably no state jurisdiction except under P.L. 280, as amended or with tribal consent pursuant to 25 U.S.C. §1321.
Non-Indian Offender -v- Non-Indian Victim	No Federal jurisdiction except for distinctly Federal offenses.	Same as above.	State courts have jurisdiction over all offense defined by state law and involving only non-Indians.
Non-Indian Offender Victimless Crime	General Crimes Act, plus a substantive offense defined by Federal statute or a substantive offense defined by state law incorporated by the Assimilative Crimes Act. The law is still questionable whether Federal jurisdiction is exclusive or concurrent with the state.	Same as above.	State courts probably have concurrent jurisdiction with the United States, although the law is unclear.

Tribal Justice Forums

Until the mid 1970s, confinement was not a traditional remedy among AI/AN people, as substantiated by the lack of archeological evidence of jails, prisons, or mental institutions in Indian communities nationwide. Therefore, it is important to understand the evolution of tribal justice systems for youth within the social and political legacies that have contributed to their current structure. Table 2 describes current types of tribal forums in operation throughout Indian country. Many tribes have multiple justice systems, which separate judicial responsibility for cultural, civil, criminal, and delinquency matters.

The current juvenile offender interventions used by the tribal courts include: community service, restitution, inpatient and outpatient treatment, counseling, referrals to traditional officials for individual and family counseling, probation, and other types of off-reservation confinement or other custodial placements.

Intergovernmental agreements with state and federal agencies help to increase the resources tribes have to address youth needs. As state and national citizens, Indian youth should have equal access to state resources and be able to receive all the benefits available. However, due to jurisdictional issues and other misconceptions, tribes often cannot access all the possible state resources or state managed federal

Table 2: Tribal Justice Forums

	Family & Community Forums	Traditional Courts	Tribal Courts	Courts of Indian Offenses
History	Established by unwritten customary law and traditions.	Established by the tribal council and tribal religious leaders according to unwritten laws.	Established by the tribal council, usually under the authority of the tribe's Constitution.	Established by the Secretary of Interior under Title 25, Code of Federal Regulations (CFR).
Authority	Subject only to authority of traditional clan systems and/or family elders, based on consensus of participants.	Subject only to authority of tribal council & religious leaders.	Subject to authority of tribal council or Law and Order Committees. Tribal Constitutions may require Interior Department approval of council ordinances or resolutions affecting the tribal court.	Subject to authority of tribal council and Interior Department. Council may adopt ordinances or resolutions affecting CFR Court, but Interior Department must approve them.
Rules of the Court	Procedures and offenses defined according to unwritten, customary laws, traditions, and practices.	Procedures and offenses defined according to unwritten, customary laws, traditions, and practices.	Procedures and offenses defined by tribal council in codes or ordinances. Tribal judges may develop rules of procedure for hearings and trials.	Procedures and offenses defined in Title 25, Code of Federal Regulations. Judges may develop Rules of Court for conduct of hearings and trials.
Judges	Presided by family elders, chosen elders or adults from the community, or traditional tribal officials.	Judges are governors or chief executive officers of the pueblo, who serve without pay. They are appointed by the Pueblo Council, which is composed of ex-governors and tribal religious leaders.	Judges may be elected by the tribal membership or appointed by the tribal council if paid by the tribe.	Judges are appointed by the Commissioner of Indian Affairs, subject to approval by the tribal council, and are paid with federal funds.
Appeals Procedures	Usually cannot be appealed, but matters may be pursued through formal tribal courts.	Appeals of decisions by the Pueblo Governor are heard usually by the Pueblo Council.	Appeals of tribal court decisions may be heard by a tribal appellate court, composed of judges, or by the tribal council.	Appeals of CFR Court decisions may be heard by an appellate court composed of judges appointed under the Code of Federal Regulations.

resources available to address local youth crime, delinquency and victimization problems.

As noted above, we must understand the evolution of Indian juvenile justice systems within the social and political legacies that have contributed to their current structure.⁶ Particular emphasis should focus on the philosophies and beliefs Indian people have regarding the treatment of troubled or troublesome Indian youth. The core philosophies and beliefs of Indian people must weigh against the theoretical perspectives of mainstream society. While there may be some overlap in philosophies and approaches, points of view Indian people have of their own children and youth should be reflected in the development of youth programs, including tribal youth courts.

Indigenous Justice Philosophy and Cultural Strengths

For many Indian nations, law is a way of life taught through oral traditional processes used to pass on the knowledge, skills, and abilities to maintain traditional life ways. Indian people consider youth to be their greatest resource who need nurturing and rearing in a loving fashion by all community members, and traditional law-ways support cultivating the strength and wisdom of young people. Table 3 describes some core philosophies and beliefs of tribes that weigh against the theoretical perspectives of mainstream American jurisprudence, which relies more on vertical and adversarial processes for handling problems.⁷

Throughout Indian country, tribes are using justice process and approaches found in their own culture or that of other indigenous groups. For example, most pueblos in the Southwest continue to rely on their traditional officials (currently identified by Spanish references: *fiscales* and *mayordomos*) to mediate cases involving children and youth. These traditional officials assist with discipline by providing support to the family and relatives of the youth. Often extended family members accompany youth and families to hearings and engage in the problem solving and resolution process. While youth are involved, much of the process is led by adults whose primary purposes are to guide discussions that inform decision-making and help the young person to take responsibility for his or her wrongdoing through apology and agreeing to implement the reparative measures identified. Depending on the level of tribal intervention, the reparative measures may become part of a court order.

The Navajo Nation's wide use of peacemaking in all types of cases provides tribes with an indigenous model to replicate in their communities to handle children, youth, and family cases. In particular, the Navajo Nation has a Peacemaking Program specifically to handle juvenile status offenses and delinquency matters. The Navajo peacemaking system allows for varying degree of involvement with its family court system. Peacemakers are generally Navajo elders or respected community members who mediate cases and help youth and other participants reach resolutions. Other tribes such as the Chippewa tribes in Michigan have developed peacemaking systems in their communities to handle truancy and other types of minor offenses including juvenile delinquency. The Michigan models include part-

Table 3: Indigenous Justice Systems

This is a **holistic system** with law and justice being a part of the whole society. Law is learned as a way of life. Communal rights are foremost in this system to maintain peace, harmony, and balance in the community.

Communication is fluid. Talk and discussion in the native language is essential to build trusting relationships that will promote resolution and healing for victims and their families, community members, and offenders and their families. Therefore, problems are viewed in their entirety, and all the contributing factors are examined.

The process is based on **distributive justice principles**. The process is inclusive and engages family and community members to participate in problem solving and serve as resources for the victim and/or offender and to the system. The spiritual realm is invoked through ceremony and prayer to provide guidance, open mindedness, and strength to all participants.

Reparative principles are used, which require corrective action to be taken by the offender. This makes the offender accountable and responsible for change and making amends.

Restorative principles are used, which require offenders to acknowledge the hurt they have caused and to apologize and ask for forgiveness from victims, affected family members, and the community.

The process is not limited by time. Long silences are accepted, and patience is valued. Focus is placed on the **right of offenders and victims to be heard, to heal, or to make things right again.**

nerships among youth, adults and elders to work together to address youth wrongdoing and to develop plans for the youth to follow.

There are many contemporary challenges to incorporating tribal culture philosophies, values, and approaches into programs for youth, including youth courts. However, there are many ways for tribes to infuse youth programs with culture based approaches and tribal philosophy. The next section provides an overview of the youth court concept and describes some challenges and strategies to build culturally relevant youth courts.

Designing Youth Courts

Youth courts are defined by the National Youth Court Center as programs in which youth are sentenced by their peers for minor delinquent and problem behavior. The youth court concept empowers young people by giving them ownership of the program and by facilitating their development of skills to enable them to become responsible leaders in their communities.⁸

Most youth courts require an admission of guilt and function as a sentencing hearing only; however, a small number will allow offenders to plead not guilty. Mainstream youth courts follow four basic youth court models—Adult Judge, Youth

Judge, Youth Tribunal, and Peer Jury. Some youth courts are hybrids or modifications of the four primary models.⁹ See Figure 1 for a brief description of the program models. Judges, police, probation officers, and schools generally refer cases to youth court. Cases heard can include theft, criminal mischief, vandalism, minor assault, possession of alcohol, minor drug offenses, truancy, and other status offenses and non-violent misdemeanor offenses. Youth courts are operated by schools, police departments, probation departments, juvenile and family courts, and community agencies. In many cases, they operate as a joint venture among several agencies within the community. Youth involved in the program learn about due process, balanced and restorative justice, and the benefits of volunteering to improve themselves and the community. Through the youth court process, offenders (i.e., respondents) do more than make up for their misdeeds; they have a chance to learn deeper lessons about their role in the community as they engage in constructive sentences imposed by their peers, such as community service, youth court jury duty, and educational workshops.¹⁰

Benefits of Implementing Youth Courts in American Indian and Alaska Native Communities

Several AI/AN communities have established youth courts or are in the process of establishing them in their jurisdictions. See Figure 2 on pages 74 and 75 for a brief description of a few youth courts in tribal communities.

Youth courts in AI/AN communities range from those that are tribal court annexed to those managed by other tribal programs or community organizations. The three main reasons for the emergence of youth courts in Indian communities include the need for:

- alternatives to handle status offenses such as truancy and school-based incidences,
- alternatives to handle minor offenses such as underage drinking, non-violent crimes, and traffic violations, and
- court options not otherwise available in some AI/AN communities to address minor youth crimes.

Youth courts provide the following benefits and/or advantages for AI/AN youth:

- Appropriate inclusion of youth in tribal government processes increases youth knowledge of AI/AN justice systems.
- Education and awareness help youth see that they can have positive roles within the court system, instead of just negative ones.
- Youth receive opportunities for leadership roles in the justice system and their tribal government or community.
- Youth discover what careers are available within the justice system.
- Youth courts provide meaningful ways to include youth in solving problems encountered by their peers.

Figure 1: Youth Court Program Models¹¹

Adult Judge Model

The Adult Judge Model has youth volunteers serving in the roles of defense attorneys, prosecuting attorneys, and jurors. Most programs that operate as an Adult Judge Model also use youth volunteers to serve as court clerks and bailiffs. However, in this model, an adult volunteer serves in the role of judge. The judge is typically the only adult involved directly in the proceedings, and the judge's role is to rule on courtroom procedure and clarify legal terminology. Often, the volunteer teen court judge is a local attorney; however, sometimes an actual juvenile or municipal court judge will serve in this capacity. According to the National Youth Court Center,¹² this appears to be the model most widely used.

Youth Judge Model

The Youth Judge Model differs from the Adult Judge Model in that youth volunteers also serve in the role of judge. Qualifications of youth judges typically include a minimum level of service as teen court attorneys and minimum age requirements.

Youth Tribunal Model

The primary difference in the Youth Tribunal Model when compared to all other teen court program models is that there are no youth jurors. The case is presented by the youth attorneys to youth judges, who determine the appropriate sentence for the teen court respondent. Most programs that use this model employ a panel of three youth volunteer judges. The youth volunteer judge with the most experience sits in the middle of the panel and can counsel the other two less experienced youth judges, if needed. For those teen court programs that adjudicate cases, this model typically is used for arraignment proceedings.

Peer Jury Model

The main distinction between programs operating under all other teen court program models versus the Peer Jury Model is that Peer Jury Model teen court programs do not use youth in defense and prosecuting attorney roles. Instead, the facts of the case are read by a case presenter, and a panel of youth jurors (usually a panel of six to eight jurors) questions the respondent directly about the offense and makes a sentencing recommendation. Most have an adult volunteer serve in the role of judge. Depending on the program, the case presenter could be the teen court coordinator, a probation or law enforcement officer, or a youth or adult volunteer. Some programs use the peer jury model exclusively, while other programs use this model for certain types of cases being heard or for cases involving younger teen court defendants.

- Positive partnerships occur among youth, adults, elders, and tribal leaders in addressing AI/AN youth crime and delinquency.
- Youth courts restore community faith in youth by providing a mechanism for youth to show that they can do positive things for themselves, elders, and the community as a whole.
- Youth are encouraged to learn from elders while they are helping them, and they feel more connected with them.
- Youth learn traditional skills through culture-based community service.
- Youth receive hope for the future, always knowing they are an integral part of a community that strives to keep them connected.

Figure 2: Tribal Youth Courts

Tanana Chiefs Conference Tribal Youth Court Program

The Tanana Chiefs Conference in Interior Alaska is assisting 14 tribes in establishing youth courts in their villages. Currently there are six youth courts in various stages of development in six villages. The primary purposes of the youth courts are:

- To encourage responsible behavior and choices.
- To empower youth with decision-making capabilities when problems arise among their peers.
- To promote healing of offenders and victims.
- To foster tribal values and cultural practices.

The structure and process of the youth courts may follow two forms: Circle Style or Panel Style. Youth courts are normal components of the tribal court. Therefore, youth court decisions are typically formalized in a tribal court order. The Circle Style approaches often include *justice circle* processes that allow participants to discuss the presenting problem and all other contributing factors not directly identified in a written petition or referral. This process encourages the youth, family, relatives, and/or other community members to participate in discussions and formulate plans with the referred youth. The Panel Style involves three to four youth plus one regular tribal court judge to sit as a panel to hear cases. The presiding judge for each case is picked from among the youth judges, but cannot be the regular tribal court judge. After everyone has had an opportunity to speak, they are excused so the youth judges can make decisions regarding the disposition. This is done through private deliberations among the youth judges until consensus is reached. The decision is written and entered as a tribal court order. The regular tribal court serves as the appeals court for both the Circle Style and Panel Style youth courts. Training is provided for new youth members in both the Circle Style and Panel Style courts.

Kake Tribal Youth Court

The Kake Tribal Youth Court in Alaska operates as a diversion program and follows the Circle Peacemaking process. The youth court handles misdemeanor violations, (e.g., tobacco and alcohol consumption, theft, vandalism, and trespassing) committed by youth in grades seven through 12 and under 18 years old. The goals of peacemaking include:

- Encourage responsible behavior and choices.
- Show respect for self, others, and community.
- Build self-esteem and self-confidence.
- Empower people with the ability for prudent decision making when problems arise.
- Promote healing among offenders, victims, and the community.
- Learn, teach, and encourage use of tribal values and cultural practices.
- Hold people accountable for their actions so they will accept responsibility for damages.

Youth members facilitate the circle sessions, although adults, such as the Community Justice Advocate, a counselor, or someone from the referring agency may participate. Other participants include parents of the offender, the victim (if applicable) and family, and at least one community elder. The Kake District Court, Department of Family and Youth Services, Division of Juvenile Justice, and family or schools may make referrals to the program. Participation in the youth court is voluntary; therefore, offenders and their families must enter an agreement to participate and follow the peacemaking guidelines and peacemaking decisions. The guidelines include the defendant bringing an elder to the peacemaking sessions. Elder participation demonstrates the value the offender and family place on peacemaking and the elder represents the offender and family's commitment to follow peacemaking resolutions. The decision is recorded as a contract that the youth and family must follow. The Youth Court Coordinator monitors the contract for compliance.

Taos Pueblo Teen Court

The Taos Pueblo Teen Court is a Peer Jury Model designed as an alternative sentencing program for first time offenders between 12 and 17 years old. The mission of the teen court is to provide an alternative sentencing program, which offers an opportunity for education and experience not only for the youth, but also by involvement of their families, peers, and community. An important goal is youth offender accountability, which is achieved by helping youth defendants learn about the justice system, its purposes, and how personal wrongdoing harms oneself, family, relatives, and the community. The program requires active participation by parents, who are routinely included in dispositions.

The Tribal Court Judge generally serves as the presiding judge although a retired judge can also serve. Youth fulfill roles as jurors, prosecuting and defense attorneys, court clerks, and bailiffs. Youth are recruited for positions; however, offenders may become jurors as a part of the disposition. The Peer Jury Model is based on the concept that most youth offenders will not repeat their actions when a jury of their peers deliberates and decides on an appropriate and constructive sentence. Another deterrent effect is involvement of youth who are not involved in the court system because it promotes learning about the Taos justice system by offending and non-offending youth and parents.

Referrals are received from the Taos Tribal Court, the Taos Juvenile Probation Office for the 8th Judicial District, and the Taos School District. The latter referral sources are possible through an intergovernmental agreement between the probation office and the school, which increases the ability of the Pueblo to address youth tribal members' problems when they occur off Pueblo lands.

Gila River Teen Court

The Gila River Indian Community Teen Court Program is a diversion program for first time, non-violent youth offenders, ages 12 to 17. It provides an alternative for the Children's Court to refer the youth to teen court instead of a lengthy adjudication process and incarceration. Through specially designed consequences, the program allows the youth offenders to repair the harm they have caused and to be held accountable for their actions. Many of the community youth are unaware of the history or cultural values of Gila River. As part of the teen court requirements, youth who participate with the program must attend or become part of a Gila River Cultural event. The premise is to make the youth aware of the sacred history of the community. The teen court is not just for youth offenders. The program has attracted numerous youth from the community to participate as volunteers. The youth volunteers are interested in learning about the court system and showing the youth offenders the behavior they are exhibiting is unacceptable. All youth offenders are given an invitation to stay with teen court as volunteers once they have completed all of the consequences that were assigned to them.

Gila River currently operates two models of teen court. The first is the Adult Judge Model. This model operates as a normal courtroom. The only adult who participates in the trial is one of two presiding Children's Court judges. The task of the judge in this model is to provide directions to the youth during the trial. The youth volunteers serve in the remaining roles. They serve as the bailiff, clerk, youth attorneys, and jury members. This model serves five districts in Gila River. The second model operating is the Peer Jury Model. This model is designed for a panel of five to 10 youth volunteers who address the youth offender in a relaxed environment. The youth offender is asked questions directly by the jury panel. The Peer Jury Model is usually less confrontational, but questions tend to be directed more to the youth's overall conduct with his or her family, school, and community. The Peer Jury Model serves two districts in the community.

The teen court receives referrals from two sources in the community. The first source is the detention hearing in Children's Court. When a youth is arrested and booked into the detention center, he or she must have a hearing within 24 hours. At the detention hearing, the judge may refer the youth to teen court if charges are not filed. The second source is the Law Office. The Law Office decides if formal charges are going to be filed or referred to teen court.

- Interest in school increases as a result of being involved with youth court.
- Youth learn how to deal with problems and conflicts in an appropriate way, especially in programs based on peacemaking principles.
- One of the reasons for bringing youth into peacemaking is to have adults act as role models to show youth appropriate ways to act and resolve issues and/or problems.
- Youth courts strengthen relationships among tribes and agencies such as social services, probation, and schools.
- Youth courts increase opportunities for partnerships among tribal systems and programs to address shared responsibilities aimed at helping youth succeed.
- Youth courts are early intervention programs that can identify and address the underlying issues that bring youth to court.

Major Tasks in Youth Court Development

Some of the major tasks that program organizers must undertake when developing a youth court include:

- researching and understanding the youth court concept and principles,
- forming community partnerships and developing advisory committees to assist with development tasks,
- conducting needs and resources assessments,
- examining legal issues,
- securing monetary and in-kind support,
- securing office and courtroom space,
- hiring staff,
- determining an appropriate youth court program function and model,
- developing a strategic plan for the program,
- determining the types of cases the program will accept,
- outlining a process for receiving and screening referrals,
- designing program services and dispositional options,
- developing effective case management and data collection procedures,
- developing an evaluation plan, and
- recruiting and training volunteers.

There are myriad resources available from the National Youth Court Center and its allied agencies to assist communities in developing youth courts and in helping youth courts enhance services that they provide (go to www.youthcourt.net for information on available resources). These resources, however, were developed based on the mainstream American justice systems. While they still can help tribal communities examine various issues related to program development and

management, AI/AN communities will need to consider their unique cultural issues, values, and philosophies when making programmatic decisions. The next section discusses some of the more notable issues that may need to be addressed to build a culturally relevant youth court in tribal communities.

Building Culturally Relevant Youth Courts in Tribal Communities

There is no single right way to operate a youth court; however, there are national guidelines to provide guidance for developing and operating effective programs and for maintaining the integrity of the youth court concept.¹³ There is flexibility within the guidelines so that communities can tailor their programs to meet their unique values, needs, and resources.

The most important aspect of a tribal youth court is making sure that it is a community-based and culturally relevant court. It is important to note that culture has a significant role in administering justice to AI/AN children on four levels:

1. *Professional and agency competency.* Agency or program professionals and paraprofessionals need to be culturally sensitive and competent. That is, staff should be knowledgeable about the tribe's history, language, beliefs, practices, and socioeconomic and other cultural nuances, and also be able to apply this knowledge in compassionate and competent ways;
2. *Sensitivity to youth cultural level.* The youth's level of cultural competence or proficiency needs to be assessed, and services provided accordingly;
3. *Promotion of cultural approaches and interventions.* Interventions and programs need to promote both cultural competency and sensitivity in order to adequately address the needs of the Indian youth and determine the most appropriate course of action; and
4. *Cultural relevance.* Programs need to incorporate interventions and remedies that reflect the culture of the tribe served. Indian nations are the most appropriate source for determining what is culturally appropriate for their youth, and the states and federal governments need to be supportive of these efforts. This includes recognition of decisions made by the indigenous justices systems (traditional courts) operated by some Indian nations.

The following section describes a few additional areas that AI/AN communities may need to consider when developing a culturally relevant youth court.

Defining the Youth Court's Purpose

Most mainstream youth courts focus on sentencing youth. Albeit there is an emphasis on community service and involvement, there is a difference in the type of connection to and understanding of communal responsibility and accountability that is important in AI/AN communities. Tribal communities tend to adhere to indigenous values aimed at restoring the balance and peace in the community rather than punishing someone who has done something wrong. This approach helps youth view themselves as important and valuable community members with a responsibility to

maintain community peace, safety, and harmony. Therefore, who is involved in and provides input into the hearing process and the way the types of consequences are assigned may reflect these differences in youth courts in AI/AN communities.

Selecting a Program Model

Some youth courts in AI/AN communities model themselves following the structure of the four primary mainstream youth court program models; however, youth courts in tribal communities often have difficulty structuring themselves according to mainstream models because these models are so different from the way tribal justice systems work.

There are stark philosophical and structural differences between the American justice system and that of indigenous and modern tribal courts that can present challenges when selecting a program model and when providing training for youth volunteers. For example, the separation of powers doctrine articulated in the U.S. Constitution would not tolerate a governor serving as the judge as occurs in traditional courts among the Southwest pueblos. Tribes with dual or multiple justice systems may have written criminal and juvenile codes presided by judges who may or may not have law degrees, but who do have extensive cultural knowledge. Similar to American courts, modern tribal courts allow attorneys to practice. However, attorneys are not allowed in the traditional systems due to the customary law that only those with a vested and continuing interest in the well-being of the individuals involved may attend and participate, not those who expect monetary compensation for representing interests. For many AI/AN tribes, the preferred process for handling youth misconduct is to settle the matter traditionally.

The mainstream youth court program models are based primarily on the way the American justice system is structured. It is relatively easy for youth involved with those programs to understand the various volunteer roles (e.g., attorneys, clerks, bailiffs) and for them to have adults in their communities who serve in these roles in the court system to train them and serve as mentors. In a tribal community, the roles of attorneys, clerks, and bailiffs may not be found in their regular processes for handling delinquent and criminal conduct, so youth courts in AI/AN communities may find it easier to develop new program models with different types of volunteer roles that more accurately reflect their systems of justice to meet their needs. See Figure 4 for some sample ways that tribal communities have created or modified program models to better replicate their systems of justice.

Defining Adult and Elder Roles

The adult or elder¹⁴ role in youth courts varies from tribe to tribe. As in mainstream youth courts, adults or elders may serve as judges, as coordinators, as court clerks, or to oversee service-learning activities. Other adult or elder roles may include responsibility for program sustainability, program evaluation, and overall management and administration.

In some youth courts in tribal communities, adults and elders are mentors who teach youth cultural skills. When youth spend time with an elder mentor,

Figure 4: Culture-Based Youth Courts

A panel of judges (typically three), rather than one person, hears cases in traditional courts. The panel determines sentences and employs traditional values for group decision-making and problem solving. Youth courts could also use a three-panel judge system to hear cases and determine consequences; thus allowing cultural values of working together to solve problems and sharing responsibility to occur.

Another aspect of traditional courts is the inclusion of extended family members to participate in proceedings and provide input on cases. This allows judges to hear from family, friends, and relatives, and enables informed decision-making regarding dispositions. Youth courts can replicate this process to achieve the same purposes related to informed decision-making. This supports cultural values that hold families responsible and accountable for helping young people make things right for those they may have harmed and for themselves. Impaneled peer judges can hear from everyone and determine the appropriate consequences.

traditional knowledge flows through history lessons, storytelling, and other learning activities and tasks. Some youth courts have a corps of volunteers and/or mentors to match with clients. Others allow the family, most often the family elder, to select someone related to them or a well-known community member to serve as a mentor. This selection process differs from mainstream youth courts that use formal screening processes to enlist and assign mentors and other volunteers. Community and/or elder mentors are natural human resources who tribal youth courts can use in their programs. While they may need training in some areas, most of what they use to help young people will come from their rich cultural knowledge and expertise, and what is in their heart. Respect for and involvement of elders contributes significantly to youth and families following youth court decisions or orders.

As stated previously, youth courts by definition are youth-driven programs. In mainstream youth courts, unnecessary intervention by and dominance of adults can have a negative effect on youths' feelings and sense of empowerment. Therefore, adults in mainstream youth courts are advised to serve as "guides" or "mentors" to youth, rather than to position themselves in a role of power or authority in the process.¹⁵ Some AI/AN communities struggle with the concept of adults taking a backseat in the youth court because this is in contrast to some tribal views that elders should be active participants in all processes.

In a few tribal youth courts, adults are active participants alongside youth in peacemaking or circle processes. In mainstream youth courts, adults do not assume active roles within the youth court proceedings. The one exception is those mainstream youth courts that use an adult judge. However, the adult judge's role is to preside over the hearing—not to intervene unnecessarily or make dispositional decisions.

To account for the cultural differences that stem from adult/elder/youth relationships within many tribal communities, it may be necessary to relax the rules of adult participation in the hearing process (e.g., have adults serve as circle participants or panelists to ask questions). However, the final distinction that makes a youth court a youth court by definition is that young people are the ones who are responsible for making the decisions about what the consequence should be for their

peers. This is where the line is sometimes blurred between what is an actual youth court and what is another type of program that involves youth. If adults or elders are active participants in the decision-making process, then it cannot be considered a youth court program. Mere inclusion of youth in a peacemaking circle or similar type process does not make a program a youth court by definition. That is not to say that involving adults or elders is wrong—it just means that the program cannot be classified as a youth court program as defined by the *National Youth Court Guidelines*. However, the fact that AI/AN communities are beginning to involve youth in their justice and peacemaking circles is a positive result that should be recognized and can often be attributed to the influences of the youth court concept. Over time, some of these communities may find themselves evolving into a youth court that fits within the established definition.

Establishing Tribal Youth Court Dispositions and Services

Youth courts in AI/AN communities have similar dispositions to mainstream programs. These include community service, restitution, essays, research papers, counseling, organizing events, beautification projects, and youth sharing what they learned with others. The Gila River Youth Court includes ways for defendants to give back to the youth court, by recruiting them to serve as prosecuting or defense attorneys, or jurors.

Youth courts in AI/AN communities who employ peacemaking principles make community service more meaningful in that it is specific to the wrongdoer (respondent) and village or community. Wrongdoers do not choose where to work from a list of service organizations; rather the group defines the community service. Community service is more specific in that it is not just a certain number of hours (e.g., you have to clean the cemetery or prepare for ceremonies, regardless of how long it takes). The point is not to “do your time,” but to perform a specific task for the community to make amends, restore a relationship, demonstrate remorse, and/or regain respect. It is purposeful community service and not just busy work.

Every tribal institution has a responsibility to teach young people cultural values that they will perpetuate. The tribal youth court process assists youth to open their eyes and gain greater understanding about what they are supposed to do to facilitate healthy choices. Knowledge and skill building activities promote opportunities to learn from elders. The educational component often is more hands on than with mainstream youth courts, especially when it involves cultural teachings (e.g., preparation of ceremonial offerings) or skill building (e.g., erecting a sweat lodge).

Involving Family and Community

Most youth courts in tribal communities promote a higher level of involvement of the parents, family, and community than is typically applied in mainstream youth court programs. Community involvement is vital for tribes. The very nature of being a tribe defines it as a cohesive community with each member having

shared responsibility for raising children and youth. Tribal youth courts can and do incorporate strong communal aspects that nurture vested interest in each youth participant's success. Therefore, the structure of tribal youth courts supports greater inclusion of parents, family, and community, especially to use distributive justice principles that hold each member equally responsible for accepting blame, problem solving, designing solutions, accountability for compliance, and enforcement of youth court decisions.

Youth courts following circle processes rely on elders, families, and the community to influence compliance. In some instances, the tribal council may call in parents to explain reasons for their child's or their own non-compliance with youth court decisions. Some conduct a series of circles over several weeks to keep a pulse on the process and to monitor progress. These programs are more family-focused than youth-focused, which allows for greater review of all family factors contributing to non-compliance. Everything is re-examined to see what is not working and why problems with non-compliance are occurring. This may lead to a modification of the original agreement, reinstatement of the previous agreement, or development of a new one. The greatest hindrances to ongoing circles are high caseloads and not enough staff or volunteers. Most youth courts provide mechanisms for elders and other mentors to report progress to the program, but a clear distinction is made between reporting and compliance monitoring.

Developing Partnerships

Partnerships with internal and external agencies vary from tribe to tribe and from state to state, but are essential to help tribal youth courts maximize access to resources. Frequently partnerships are informal and based on personal relationships across programs or across jurisdictions. Recently, the trend has been towards formalizing partnerships through interagency or intergovernmental agreements that identify areas of mutual interest and responsibility along with the roles and responsibilities of each partner. Youth court partnerships occur with the following types of governmental and non-governmental agencies and organizations:

- tribal, county, and state probation;
- on- and off-reservation schools;
- Indian Health Services;
- treatment programs;
- Boys and Girls Clubs; and
- Elderly centers.

Partnerships vary depending on the location of the tribe. Some tribes are near urban centers that increase their ability to access financial and other types of resource partners from mainstream groups such as churches, private businesses, non-profits, and schools. Rural and/or remote tribes have more challenges to recruit or establish similar partnerships. Recently, state and county agencies have become more amenable to working with tribal programs through development of formal

intergovernmental agreements supported by state statutes and policies. For example, the New Mexico Children's Code mandates state criminal and juvenile justice administrators and practitioners to consult with the New Mexico tribes when an Indian child is involved in the state system. The purpose for the consultation is to exchange information and provide an opportunity for the tribe to be involved in the fashioning of dispositions or placements or treatment of the court-involved Indian child. Tribal court orders are also recognized through intergovernmental agreements between the tribal courts and the state. These statutes support the agreements among the Pueblo of Taos and the Taos Probation Office and the Taos Public Schools.

Usually youth courts seek partnerships to expand services for diagnostic assessments, mental health and other types of counseling, treatment, tutoring and homework support, law-related education, sports, and recreational resources. Frequently the only partners available are internal tribal programs or federal agencies such as the Bureau of Indian Affairs and the U.S. Indian Health Service. Tribal programs provide enormous assistance to youth courts by providing in-kind services such as training and technical assistance and options for inclusion in dispositions. Several tribal programs provide counseling services, assessment and diagnostic support, community service support, parenting support and referral services. Community health aides often provide referral services and help look after youth and families in the community by providing ongoing non-coercive support.

Community partnerships help youth courts in AI/AN communities fulfill important cultural components such as accessing traditional healers or medicine men and women, spiritual healers, community mentors, storytellers, and traditional artists and craftsmen and women. There may be different mentors assigned to the same youth for different tasks and purposes. Communities have become tremendous resources for youth courts because they provide natural helpers who can teach youth cultural history, tribal philosophy and knowledge, and traditional skills. The highest and most revered are elders, traditional healers, traditional artisans, and tribal leaders. Tribal leaders and judges can teach about tribal government in law-related education courses. Elders can instruct on tribal philosophy and language. Artisans can teach youth how to make drums and moccasins, and design dance regalia. Spiritual leaders can teach youth important ceremonial protocols, and how to pray and give thanks. Use of natural helpers turns the community into a resource that is involved in addressing youth needs and issues.

Programmatic Challenges to Operating Tribal Youth Courts

Several factors present challenges to effective operation of tribal youth courts that may or may not apply to some mainstream youth courts. The following are most notable.

Environmental Factors

Environmental factors such as weather, geography, and remoteness may interrupt or interfere with sessions or even prohibit the establishment of a youth court in the community. Youth court participants may find it difficult to attend

sessions due to frequent bad weather in places such as Alaska and the Northern Plains.

Planning and Development Factors

Planning and development factors play a key role in the success of youth courts. Tribal staff have great ideas and know their community's needs, but may lack essential resources for putting ideas into action over the long term. Tribes are often reluctant to ask for training and technical assistance; therefore, planning and development support must be accessible, interactive, and include a strong outreach component so that tribes know about planning resources and how to access services.

Not giving enough thought to the goals and objectives of the program may cause programs to promise more than they can deliver and set the program up for failure. No program can meet all the needs of a community, so purposeful planning is necessary to define goals, objectives, and outcome measures. Such planning can begin with a thorough assessment to identify needs, pulse community readiness, and see what resources are available in the community. Another design aspect is inclusion of effective screening and intake to ensure the appropriateness of referrals and acceptance into the youth court program. The tribal youth court program must be clear about the criteria for youth and adult participation.

Capacity Building Factors

Capacity building factors include access to resources to develop tribal youth courts. Resource needs include funding and places where youth court sessions can occur. Some tribal courts have limited office space and may not be able to provide the necessary space to house the program. Other courts may not have the manpower to provide the necessary support to operate the program. The tribal court may need strengthening before establishing a youth court. Some programs are not getting enough initial training, which hinders staff and volunteer performance. Providing effective capacity building support to tribal programs requires expertise beyond knowledge of a particular topic and technical skills. Understanding the impact of issues such as culture and tradition, jurisdiction, socio-economics, access to resources, technology, the structure of tribal systems, and relationships between entities are prerequisites to providing effective and appropriate assistance.

Recruitment Factors

Recruitment factors are affected by the availability of adult and youth volunteers in communities. Reliance on volunteers may not be possible for some small tribes because they may already be overextended with other community activities. Other issues include the lack of anonymity for safety purposes and maintaining objectivity. Youth courts need to have meaningful incentives for youth and adult volunteer retention.

Community Factors

Community factors include awareness of community readiness issues that could hinder implementation of youth court programs and strategies. Community

readiness issues may include the lack of community knowledge or awareness about juvenile crime and delinquency issues. Not knowing what to do about it may contribute to less overt urgency to address youth crime problems. Communities may also be in denial that there are problems with youth or the current system, which hinders people from seeing youth crime, delinquency, and victimization as a local problem. There may also be the assertion that “nothing can be done,” which, if echoed by community decision makers, may inhibit the development of viable alternatives to address youth problems. These attitudes contribute to communities becoming reactive, rather than proactive in dealing with problems when they are small and easier to handle, and can hinder strategies to implement early intervention programs such as youth courts.

Resource Factors

Resource factors include time limitations for training and technical assistance to support program development and capacity, and staff and volunteer capabilities. Finding the right people who are culturally knowledgeable and competent to help tribes with local capacity building is critical. Support must be from a diverse team of skilled and experienced professionals who have technical skills, research skills, program development skills, teaching skills, and practitioner experience. Tribes must work collaboratively with other Indian and non-Indians, and governmental and nongovernmental agencies to increase the quantity of capacity building resources, improve the quality of resources, and make better use of resources and services available to tribes. It is important for tribes to build capability to maximize use of community resources.

The limited labor pool that tribes have to draw from to employ their own people hinders the ability of tribes to address juvenile justice problems effectively. Additionally, tribes must spend more time and financial resources to create a skilled and knowledgeable labor force. Challenges for acquiring knowledgeable and skilled workers often impacts tribal readiness and capability to address youth needs, problems, and issues.

Collaboration Factors

Collaboration factors involve several levels of interaction with youth, adults, elders, communities and government and non-governmental agencies to support youth court activities either as recipients of services, providers, or as financial or human resource partners. There needs to be a willingness by all groups to practice good communication, cooperation, and information and resource sharing, and to focus on youth court implementation issues rather than personal, territorial, or political issues. Since Indian youth are citizens of three sovereigns—tribe, state, and national—it is essential to build intra- and inter-tribal partnerships along with intergovernmental partnerships by finding a common ground and identifying mutual interest and responsibilities to address Indian youth needs. Tribal youth courts also need to collaborate with private and non-profit organizations such as the National Youth Court Center to access training and technical assistance resources. Finally,

collaboration builds trust horizontally across governments and programs, and vertically with program recipients, staff, volunteers, and communities.

Safety Factors

Safety factors address several areas related to personal emotional, physical, spiritual, and community safety. More often than not, many tribes are small, rural, and remote. As a result, tribal members know everyone in their community or are related to a majority of them. Retaliation by other youth or family members can be a problem if the structure and process of the tribal youth court do not include safety and protection measures. Retribution may not be violent; it could just be isolation and rejection from the group, which can be damaging to adolescents' self-concept and feelings of belonging to the community. Tribal youth courts must ensure everyone knows what to expect and is not blindsided by what occurs in youth court programs.

The infiltration of gangs in some AI/AN communities adds another dimension on safety from fear of gang-related retaliation. Indian gangs threaten the very fabric that constitutes family strengths, extended family relations, and cultural values that keep them together. Parents do not understand the gang's control of their children, how to regain their leadership and authority status over their children, how to prevent the children from joining gangs, or how to protect them from gang violence. Dominant society has contributed to the decline of Indian value systems within the family and tribal community because these value systems conflict. The pursuit of individual happiness and success are highly valued in dominant society, while Indian communities highly value and depend on communal harmony over individual rights. The lack of clear cultural values from the home contributes to low self-esteem, which influences negative Indian identities to develop, and increases youth vulnerability to join gangs and become engaged in acts of violence. These have all increased the incidence of family disruption and intra-family violence by youth, and weakened the extended family.

Another aspect of safety deals with the ability of youth and others to show respect and maintain confidentiality about youth court cases. Breaches of confidentially lower community trust with the youth court and of the staff and volunteers. Lack of trust and credibility can hinder the willingness of persons and agencies to share information that may be helpful in a hearing. Different jurisdictions may have different rules for the type of information that should be confidential. Therefore, youth courts must identify their own confidentiality parameters within the context of their own community expectations and needs.

Cultural Relevancy Factors

Cultural relevancy factors include finding, creating, or fine-tuning a model, structure, and process that works for the community. The youth court must find ways to incorporate cultural strengths into their program, while adhering to the core tenet of youth court being a youth-driven program in which youth make dispositional decisions. Additionally, the cultural component must be relevant to the

tribe's culture and not one based on generalities or pan-Indian practices. For example, smudging or sweat lodge ceremonies are not applicable to all tribes. It is important for youth courts to conduct assessments to obtain information about relevant and appropriate cultural values, practices, and activities to include in the program.

Diversity Factors

Diversity factors involve differences in population, language, and culture, proximity to resources available from urban areas, geographic location, and the unique relationship the Indian nations have with federal and state governments, which influences responses to youth crime and delinquency issues. The diversity of law and order systems challenges the development of programs and curriculum that can meet the needs of all tribal youth court programs. Some tribes have juvenile courts with codes, and others are traditional, with unwritten customary laws. Law enforcement services are also diverse, with some tribes relying on traditionally appointed officials (e.g., sheriffs, deputies, *fiscales*, and *mayordomos*), and others having a mixture of traditional officials supported by Bureau of Indian Affairs (BIA) police and tribally operated law enforcement. Specialized juvenile officers are lacking in most tribal and BIA law enforcement departments. All these are factors youth courts should consider in their design.

Sustaining Youth Courts in American Indian and Alaska Native Communities

Once a decision to implement a youth court is made, program organizers need to start planning for long-term sustainability and integrating the program into core activities of relevant organizations within the community. Development of programs often occurs without a commitment of continued funding or without sufficient planning toward long-term viability. Ultimately, program duration is a key factor in achieving sustained effects over time.¹⁶

A sustainability plan is key to insuring ongoing service delivery beginning at the conceptual stages and becoming part of the initial program design. The goal of a sustainability plan is fourfold.¹⁷

- First: The plan must address community integration strategies so that the program is not only accepted by the community, but also is well used by the community.
- Second: The plan should identify community involvement strategies to institutionalize the program into local systems so it becomes an indispensable part of a larger network of services and resources, thus creating a niche for the program and increasing its community value.
- Third: The plan ought to extend program relationships by developing new partnerships and enhancing existing relationships.
- Fourth: The plan should describe strategies for program evolution using evaluation methods that identify the appropriate points at which the program should diversify or specialize, grow or maintain its size, absorb or be absorbed.

Sustainability is not possible without support for the program. Gaining that support may be the most important task in any sustainability effort. Support for a program relies on relationships the program has with its clients, internally within the program, with tribal and project administration, with the community at large, and with funding agencies. The basis for that support is developing and maintaining sustainable relationships built on and thriving on trust, communication, reciprocity, and commitment. If any of these elements are missing, relationships become tenuous, and the result may be a loss of support. Each of these different relationships requires different approaches and priorities. For example¹⁸:

- Client support develops through provision of user-friendly services, good services, and empowering the client through meaningful involvement.
- Internal support occurs through staff development, team building, comprehensive planning and evaluation, and program flexibility.
- Support from policy makers and administrators is gained by sharing the program's vision, mission, goals, and outcomes with administrative staffs and tribal leadership.
- Documentation and data gain support by providing evidence of program success to everyone—the target population, tribal leadership, the community, funding agencies, and other appropriate audiences.
- Social marketing becomes important in conveying the image the program wants the community to have. This involves strategies to make known the important issues, problem-solving and other services the program provides to the target population and how program efforts benefit the community. For example, marketing the positive results of a youth court program to tribal court and law enforcement agencies would encourage their use as viable court alternatives. One could market the cost savings and benefits of employing early intervention strategies compared to the cost of confinement and preventing further penetration of young people into the juvenile justice and correctional system.
- There is more to developing community support than promoting an image. The program must meet the needs for which it was designed, and the community needs to feel that they are an integral part of the program's processes—not just consumers.
- For the funding agencies, support is easier to get if the program is stable and capable. Having established and effective policies and protocols that are followed helps to build program credibility and reliability. In addition, documentation and accountability are necessary components to gain support from funding agencies.
- Sustainable relationships need to be cultivated with other agencies that interact with the program. The same principles of trust, communication, reciprocity and commitment are also necessary to maintain relationships with other agencies.

Sustainability is best achieved through program development that includes a long-term focus and provides for ongoing structural review and program evaluation, has and follows consistent policies, produces reliable data, and has tribal leadership and community interest and support.

Developing an Evaluation Plan

A good evaluation begins with a thorough needs assessment at the front end of program development. Needs assessments provide direction for adapting or developing services specific to the needs of a community, based on the perceived goals, needs, wants, and characteristics of the tribal community. Community services and agencies need accurate, useable information that reflects local needs and characteristics. This information allows for rational decision-making, better use of limited resources, a way to determine priorities, and provides a basis for program review and revision. In order to eliminate gaps and redundancies in services, communities need reasonably reliable and valid information.¹⁹ Assessments, program planning, implementation, and evaluation are most credible when communities are involved in all four processes.

Evaluation begins with a clear understanding of program goals, objectives, activities, tasks, and assumptions. Program evaluation is important for:

- *Program Feedback*: Provides guidance for program operations.
- *Program Accountability*: Demonstrates success of program.
- *Program Development*: Guides positive program expansion.

Foremost, AI/AN tribes must build evaluable programs and define success based on measurable goals and objectives. This requires sound program design and development, effective implementation strategies, consistent program data collection that supports tracking program progress, and tracking participants during and after program completion. Tribal youth courts should evaluate:

- *Effort*: Activities, staffing, and services.
- *Efficiency*: Cost, time, and resources.
- *Effectiveness*: Achievement of program goals and objectives.
- *Appropriateness*: Relevancy to the needs of the community, right clients, cultural relevance, and right methods and approaches.

Tribal programs often lack the resources to develop, implement, and evaluate projects effectively. High levels of need and limited resources often demand that tribal programs focus solely on service delivery, often bypassing the need for developing a solid and evaluable framework. Tribal youth courts need to advance program technology and build on existing resources to develop alternative solutions and create multiple pathways to achieve goals that lend themselves to evaluation. It is noteworthy to highlight that evaluation fulfills important capacity and capability building roles; therefore, funding for evaluation is an essential aspect of tribal youth courts. Below are some outcomes that tribal youth courts may consider to measure success.

Youth Outcomes

It is important for tribal youth courts to increase self-esteem, which, while difficult to measure, may be done through pre- and post- program client satisfaction evaluations to see how youth perceptions, attitudes and feelings changed attributable

to the youth court intervention. One could measure youth empowerment by including questions in pre- and post-program evaluations and also by assessing the degree and variety of participation by program participants with youth and/or community issues during and after the program. A measure of civic consciousness and empowerment could be tracking whether youth court participants vote in tribal, state, and national elections.

Youth courts should strive to increase competence and academic achievement, but it is essential for youth courts to demonstrate that they are the reason for youth improvements in both of these areas as articulated in goals and objectives and demonstrated by program activities. Measures could include monitoring school attendance, grades, and school incidences. A long-term measure could include tracking youth court participants who go on to have careers in a justice field.

To measure reduction of community risk factors, youth courts need to have baseline information to measure direct program impact on such risk factors as high suicide rates, domestic violence, substance abuse, etc. Again, there should be direct program goals and objectives that link such outcomes to activities or interventions provided by the program. For example, youth courts that address underage drinking or driving while impaired may provide activities or interventions aimed specifically at reducing community tolerance for such violations by youth. Youth courts could include effective referrals and linkages to needed services for mental health services, family counseling, or shelters.

Community Outcomes

Communal values are important aspects of life carried out by many tribal institutions. A tribal youth court could make increased community involvement a goal through service learning and other activities. Measures of success could include how active youth are in their community by tracking the number of community service activities a youth performs during the program. Measures could also include the number of community events, traditional ceremonies, or community causes youth become involved in during and after the program. Again this could be measured with pre- and post-tests.

Adult Involvement

Effective adult involvement is important for all youth courts. One measure is to track adult and youth mentoring or volunteer relationships during the program. This can occur through personal interviews with adults and youth, or through client and provider satisfaction surveys. Another is to track mentoring relationships to see if they continue beyond the youth court obligation. Another way could be to conduct oral surveys of client and adult or elder mentors or volunteers at various intervals (three, six, to twelve months) after the program.

Reduce Recidivism

A common goal of youth courts is the prevention of further law-violating behavior by participants. This can be measured by analyzing youth arrests and/or court referrals within specified time periods and for certain types of offenses. There

is great variation in determining measures for recidivism across programs. Each program will need to define the determining variables that constitute recidivism or relapse into previous bad conduct or addictions.

Cultural Outcomes

Tribes have high expectations of tribal institutions and programs to develop programs that strengthen traditional ways of life, cultural beliefs, customs, and practices. Throughout Indian country, cultural renewal and revitalization are the mantra to reclaiming our youth and equipping them with knowledge, skills, and abilities found only in indigenous philosophy and practice. One can measure cultural knowledge by using culturally relevant intake instruments that include questions about culture. For example, questions could include levels of language usage; knowledge of tribal history, clanship, moiety, or societies; participation in cultural events, ceremonies, or dances. Other questions could include family mobility to determine consistent contact with the child's tribe and self-reported attachment to the tribal culture and AI/AN religious practices. The intake data can establish the baseline for measuring increases in a youth's knowledge, skill, and use of tribal culture, beliefs, and practices due to participation in the program. Tribal youth courts can contribute to the resurgence of culture by building programs that promote the use of native languages and indigenous law and principles, along with other culture-based activities. Many tribes overlook capturing cultural information due to the oral nature in which information and skills are passed from generation to generation. By using culturally relevant data collection instruments and processes, tribal youth courts can document their contribution to increasing youth cultural strengths.

Conclusion

Youth courts present a viable alternative for tribal courts—modern and traditional—to include in the options available to address the needs of court-involved youth. As noted above, tribes can determine the design and structure of their youth court to fit the cultural, spiritual, and/or philosophical values of their tribe. The most important aspect is to maintain the youth-driven control over the design of consequences that peers receive from youth court proceedings. Youth courts provide an opportunity to engage youth, elders, and communities in meaningful partnerships to work together to help troubled or troublesome Indian youth. Most importantly, these Indian youth are enabled to work on their issues and needs while in the community and with help from their own people.

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Endnotes

¹ American Indian and Alaska Native (AI/AN) is used interchangeably with Indian nation, Indian, and Native American and is inclusive of terms used to describe AI/AN tribes, villages, pueblos, and rancherias.

- ² Most tribal courts, police, and jails were established after passage of P.L. 93-638, the 1975 Indian Self-determination Act. This law enabled Indian nations to receive funding directly from the Federal government (through the Bureau of Indian Affairs and Indian Health Service) to operate and manage programs and services for their communities. Another 1970's Federal program, the Law Enforcement Assistance Administration, funded jail construction.
- ³ The Major Crimes Act, 18 U.S.C. § 1153 (1885, Supp. 1986), the Indian Country Crimes Act, 18 U.S.C. § 1152 (1817), the Assimilative Crimes Act, 30 STAT. 717 (1898), Public Law 83-280, Indians—Criminal Offenses and Civil Causes-State Jurisdiction, 18 U.S.C. § 1162, 25 U.S.C. §§ 1321-1326, 28 U.S.C. § 1360 increased government control by ending exclusive tribal jurisdiction and allowing the Federal government to have shared jurisdiction in certain crimes committed in Indian country.
- ⁴ Smith, S. (1999). *American Indians and crime*. Washington, DC: U. S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.
- ⁵ Adapted from the National Indian Justice Center Legal Series, Petaluma, CA.
- ⁶ For further discussion of tribal court development see Vicenti, C.N. (1995). The Re-emergence of tribal and traditional justice systems. *Judicature*, Volume 79, Number 3, November/December.
- ⁷ Melton, A. P. (1995). Indigenous justice systems and tribal society. *Judicature*, Volume 79, Number 3, November/December.
- ⁸ Godwin, T.M., Heward, M.E., and Spina, T. (2000). *National youth court guidelines*. Lexington, KY: National Youth Court Center, American Probation and Parole Association.
- ⁹ Godwin, T.M., Fulton, B.A., and Steinhart, D. (1998). *Peer justice and youth empowerment: An implementation guide for teen court programs*. Washington, DC: National Highway Traffic Safety Administration, U.S. Department of Transportation; Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice.
- ¹⁰ Pearson, S. (2003). Youth court—A path to civic engagement. *National Youth Court Center Policy Brief*. Lexington, KY: National Youth Court Center, American Probation and Parole Association.
- ¹¹ Godwin, T.M., Fulton, B.A., and Steinhart, D. (1998). *Peer justice and youth empowerment: An implementation guide for teen court programs*. Washington, DC: National Highway Traffic Safety Administration, U.S. Department of Transportation and Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice.
- ¹² National Youth Court Center Database as of January 2004. Unpublished data.
- ¹³ The *National Youth Court Guidelines* were developed by the National Youth Court Center. You can obtain a free copy by contacting the National Youth Court Center at PO Box 11910; Lexington, KY 40578; Phone: 859-244-8193; Fax: 859-244-8001; Email: nycc@csg.org. It is also available online at www.youthcourt.net.
- ¹⁴ Variation exists with who is considered an elder. While age is one criterion, other life experience and involvement in other aspects of community life are factors that may determine when one is donned with elder status in a given AI/AN community. For example, elder status may occur sooner for individuals fulfilling community roles and responsibilities such as tribal leadership roles, medicine men and women, spiritual leaders, or those recognized by tribal members as having expert knowledge in the cultural ways of life and law in the tribe.
- ¹⁵ Godwin, T.M., Heward, M.E., and Spina, T. (2000). *National youth court guidelines*. Lexington, KY: National Youth Court Center, American Probation and Parole Association.
- ¹⁶ Health Canada. (2001). *Preventing substance use problems among young people – A compendium of best practices*. Available at www.hc-sc.gc.ca/hecs-sesc/cds/publications/substanceyoungpeople/chapter3.htm.
- ¹⁷ Kaufman, M. (2002). *Building sustainability in demonstration projects for children, youth, and families*. Washington, DC: , U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
- ¹⁸ Chino, M. (2002) *Program sustainability: Developing strategies for maintaining programs over the long-term*, for the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention., Albuquerque, NM: American Indian Development Associates.
- ¹⁹ Chino, M. & Melton, A.P. (2000). *A guide to conducting needs assessments in American Indian and Alaska Native communities*. Albuquerque, NM: American Indian Development Associates.

Tribal Youth in the Juvenile Justice System

Research has examined the juvenile justice system's disparate treatment of racial and ethnic minorities. This research includes studies of the disproportionate representation of American Indian and Alaska Native (AI/AN) youth¹ across the contact points in the juvenile justice system; the lack of access to treatment, services, and other resources that AI/AN youth can obtain; and the risk factors that may increase AI/AN youth's contact with the justice system (Lindquist et al. 2014; Rodriguez 2008; Mmari et al. 2009; Rountree 2015).

Defining American Indian and Alaska Native Populations

AI/AN individuals are generally defined as people who identify as having some degree of tribal heritage and are recognized as members of these groups either by a tribe or the United States government (Dorgan et al. 2014). According to the 2010 census, the U.S. population comprises 308.7 million people, of which 5.2 million (1.7 percent) identified as AI/AN, either alone or in combination with another race category (Norris, Vines, and Hoeffel 2012).

The U.S. government recognizes 566² AI/AN tribes, most of which have their own distinct language and culture (Lindquist et al. 2014; Indian Health Service 2015). The contemporary AI/AN population is also markedly diverse in terms of geographic distribution; roughly half of AI/AN populations live on reservations or tribal lands (federal or state reservations, Alaska Native areas, or designated tribal statistical areas). The other half live outside of designated AI/AN areas, particularly in urban areas (Beauvais, Jumper-Thurman, and Burnside 2008). Moreover, the AI/AN population is relatively young. The 2000 census showed that about 33 percent of this group was under age 18, compared with 26 percent of the total population, and that the median age for this group (29 years) was less than the median age (35 years) for the general U.S. population (Ogunwole 2006; Lindquist et al. 2014).

Jurisdictional Issues Faced by Tribal Youth

Crimes committed in Indian country (which is defined as all Indian lands and communities within the borders of the United States) can fall under the jurisdiction of the federal, state, or tribal justice systems (Dorgan et al. 2014; Adams et al. 2011). Jurisdiction depends on the following four factors: the location of the crime, type of crime, status of the perpetrator, and status of the victim.

¹ For the purposes of this literature review, Tribal Youth is defined as American Indian and Alaska Native (AI/AN) Youth.

² This number is current as of April 1, 2016. However, this number will soon increase to 567.

<http://www.bia.gov/cs/groups/public/documents/text/idc1-030829.pdf>

Suggested Reference: Development Services Group, Inc. 2016. "Tribal Youth in the Juvenile Justice System." Literature review. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention.

<https://www.ojjdp.gov/mpg/litreviews/Tribal-youth-in-the-Juvenile-Justice-System.pdf>

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In general, the federal government has jurisdiction over all federal crimes (including bank robbery and drug trafficking) committed in Indian country, regardless of whether the perpetrator or the victim is AI/AN (Adams et al. 2011; Motivans and Snyder 2011; Rountree 2015).

If the offense is not a federal crime, jurisdiction in Indian country depends on whether the state is designated a Public Law 280 (PL 280) state. In 1953, the federal government greatly expanded six states' jurisdiction over tribal matters under PL 280, which allows both the state and the tribe to have jurisdiction over the tribe (Tribal Law and Policy Institute n.d.). This means that even if a state decides to pursue a case against a tribal youth, this does not prevent the tribe from prosecuting the same case; in addition, the double jeopardy rule does not apply because tribes have inherent sovereign powers that are not derived from the federal government. If an AI/AN juvenile commits a crime in a PL 280 state, jurisdiction is shared by both the state and the tribe. Alternatively, if a non-AI/AN juvenile commits a crime, jurisdiction rests solely with the state (Adams et al. 2011; Tribal Law and Policy Institute n.d.).

Conversely, in other states, jurisdiction depends on whether the defendant is AI/AN, the victim is AI/AN, and whether the crime is considered a "major crime," as defined by the Major Crimes Act. The Major Crimes Act lists 15 offenses as major crimes such as murder and manslaughter. If a non-AI/AN individual committed the offense and the victim is AI/AN, jurisdiction rests with the federal government. Alternatively, if the case involves a non-AI/AN defendant against a non-AI/AN victim, the state has jurisdiction. Thus, at a minimum, for a tribal court to have jurisdiction, the defendant must be AI/AN (Adams et al. 2011).

This complex arrangement among the three jurisdictions (tribal, state, and federal) determines which justice system will handle the processing of tribal youth (Rountree 2015). This is not a situation which most youths, including those in other minority groups, must face; most juvenile cases are handled in state courts (Hockenberry and Puzanchera 2014). In addition, determining which system will handle tribal youth cases depends on available resources, because tribal justice systems are often underfunded and unable to handle the processing (Dorgan et al. 2014).

Overrepresentation of Tribal Youth in the Justice System

Research suggests that tribal youths are more likely than their white peers to be arrested, adjudicated, and incarcerated in juvenile justice systems across the United States. For example, tribal youths are 50 percent more likely than white youths to receive the most punitive sanctions such as out-of-home placement after adjudication or a waiver to adult court. ³One of the clearest examples of overrepresentation of tribal youth in the justice system can be found in the federal system: 60 percent of the federal juvenile justice population comprises tribal youth (Hartney 2008).

Only a small number of tribal youths are held in tribal facilities. For example, in 2007, only 13 percent of all detained tribal youths were held in jails or facilities on tribal lands. Such statistics show that not only are tribal youths disproportionately represented in the juvenile justice system, but they are also mostly housed in detention and long-term state and federal facilities that are far from tribal lands. This can negatively impact their ability to successfully reintegrate back into society (Lindquist et al. 2014).

A review of research conducted between 2002 and 2010 on racial disparities in the juvenile justice system uncovered 11 studies that examined the effect of being AI/AN on juvenile justice processing (Cohen et al. 2009). Across the 11 studies, the negative impact of race was found in over half of the case

³ The published study did not offer comparisons to other racial or ethnic categories.

outcomes.

For example, one of the 11 studies was an analysis of referrals to juvenile court in Arizona. In this study, Rodriguez (2008) found that AI/AN youths were more likely than white youths to be detained, even when controlling for factors such as prior record and offense type. In another study, of racial disparities in Alaska, it was found that AI/AN youths were less likely than white youths to be diverted from the juvenile justice system (Leiber, Johnson, and Fox 2006) .

Overall, the review by Cohen and colleagues (2013) found that even when controlling for important factors—such as prior record, offense type, gender, and age—tribal youths still experience disparate treatment in the juvenile justice system, when compared with white youths. In addition, the review also found that, compared with other minority youth, there is a lack of research on AI/AN youth. The review located 56 studies on black youth and 30 studies on Hispanic/Latino youth, but only 11 studies on AI/AN youth (Cohen et al. 2013).

Risk Factors

Historical Trauma

Historical trauma in the lives of tribal youth is generally traced back to the erosion of tribal sovereignty in the late 19th and early 20th centuries (Litt and Singleton n.d.; Eid et al. 2013; Rountree 2015). During this time, youths were sent to boarding schools, which forbade native languages and customs, causing generations of AI/AN people to lose connection with their tribal culture. Research also suggests that tribal youth are also still negatively impacted by the historical trauma that was caused by forced relocations, cultural assimilation, and broken treaties with the U.S. government (Litt and Singleton n.d.; Eid et al. 2013; Rountree 2015).

Violence

The exposure to violence is one of the most troubling problems facing tribal youth (Dorgan et al. 2014). In a study of the self-reported results from the Youth Risk Behavior Surveillance Survey, Pavkov and colleagues (2010) found that tribal youths were more likely than White youth to have carried a gun in the past 30 days, been involved in a physical fight in the last 12 months, been injured in a physical fight in the last 12 months, and been involved in a fight at school in the last 12 months. Tribal youth were also more likely than Hispanic/Latino youth to have carried a gun in the past 30 days and been injured in a fight in the last 12 months.

Tribal youths are also more likely than their peers to be the victims of serious violence or simple assault (Litt and Singleton n.d.). According to the Indian Law and Order Commission, the rate of posttraumatic stress disorder (PTSD) among tribal youths matches or exceeds the rate of PTSD in military personnel who have served in the Afghanistan, Iraq, and Persian Gulf Wars (Litt and Singleton n.d.; Eid et al. 2013).

Suicide

The Centers for Disease Control and Prevention found that between 1999 and 2009, tribal youths experienced suicide rates that were 50 percent higher than non-tribal youths (Litt and Singleton n.d.). More recent research shows that tribal youths are 2.5 times more likely to die by suicide than non-Native youths (Eid et al. 2013). Moreover, some tribal leaders have indicated that approximately 20 percent of their youths have attempted suicide (Eid et al. 2013).

Substance Use

Alcohol use disorders are among the most severe health problems for AI/AN people (SAMHSA 2013). This chronic exposure to high substance use has negatively affected the younger generation and continued this vicious cycle. For instance, tribal youths use cigarettes, engage in binge drinking, and use illegal substances at greater rates than the general population (Litt and Singleton n.d.; Eid et al. 2013). Moreover, the Indian Law and Order Commission found that binge drinking is more common among tribal youths than any other racial or ethnic group, and that tribal youths up through the age of 24 are more than twice as likely to die as a result of binge drinking than non-tribal youths (Eid et al. 2013).

Lack of Cultural Instruction

Most tribal youths attend public schools operated by the town or city near their home, even if they live on reservations (Pavkov et al. 2010). However, Mmari and colleagues (2010) found that attending school outside of the reservation can be a risk factor. For example, Arizona passed English-only laws, which replaced previous bilingual laws in schools. As a result, cultural instruction has been limited – if not discontinued – and even AI/AN teachers can no longer teach the tribal language. Tribal youths who attend schools outside the reservations feel a loss of language and cultural identity, and ultimately experience family separation (Mmari et al. 2010).

Overall, these risk factors, in combination with poverty rates and tribal communities' frequent lack of funding for mental health and other services, make tribal youths more susceptible to coming into contact with the juvenile justice system.

Protective Factors

Protective factors are those characteristics of the child, family, and wider environment that can increase resiliency and reduce the likelihood of adversity leading to negative child outcomes and behaviors, such as contact with the juvenile justice system (Development Services Group, Inc. 2013).

Family

The presence and support of family can be an especially important protective factor for tribal youth. For example, Mmari and colleagues (2010) conducted focus groups with tribal community members and found that family, especially parents, can have a protective presence in the lives of tribal youth. Parental support and having a close relationship with parents was one of the most frequently cited protective factors among tribal members. A study by LaFromboise and colleagues (2006) surveyed AI adolescents in grades 5–8 to examine protective factors that impact resilience. They found that maternal warmth (a measure of parenting behavior) significantly increased the odds of a youth being resilient. As measures of maternal warmth increased, the measures of a youth's resilience also increased. Pu and colleagues (2013) studied protective factors for violence among AI students in grades 6–12. They found that perceived parental monitoring was a significant protective factor for violence among female tribal adolescents (although not among male adolescents). Female adolescents who perceived greater parental monitoring were more confident they could avoid getting involved in violence.

Culture

Culture (which includes traditional values, customs, activities, and ceremonies in AI/AN communities) can play an important, protective role in the lives of tribal youth. For example, one protective factor that Mmari and colleagues (2010) found to be particular to tribal youths was their knowledge of tribal language. Tribal language was seen as a way to teach youths about cultural values and customs. For some youths, this gave them a sense of purpose and guidance. However, this factor was not as important to all tribal youths who were interviewed. While some felt that their

communities taught them the importance of learning the tribal language and cultural heritage, others did not feel it was as important to learn the language (Mmari et al. 2010). This particular finding emphasizes how tribal communities differ from each other, and how protective factors may be distinctive to particular tribes and tribal settings.

Additionally, LaFromboise and colleagues (2006) examined the impact of enculturation—which is the process of learning about one’s native culture—on the resilience of AI adolescents. They found that the more enculturated the youths were, the greater their resilience. As measures of enculturation increased, youths were 1.8 times more likely to be resilient. Further, Whitbeck and colleagues (2001) found that enculturation was positively associated with school success, meaning that the more enculturated youths had higher class grades and more positive school attitudes. The results show the important and positive influence of traditional culture in the development of tribal youths.

Outcome Evidence

Few evidence-based programs target tribal youths and the particular problems they face. Below are examples of evidence-based programs that seek to address problems such as suicide and substance use, which are prevalent among tribal youths.

American Indian Life Skills Development. Also known as Zuni Life Skills Development, this is a school-based, culturally sensitive, suicide-prevention program for AI/AN adolescents. Tailored to AI/AN norms and values, the curriculum was designed to reduce behavioral and cognitive factors associated with suicidal thinking and behavior. For the Zuni people, suicide is especially distressing because it is forbidden in their traditional culture (LaFromboise and Howard-Pitney 1995). Zuni leaders initiated the development of a suicide prevention program for students in grades 9 and 11, with the goal of reducing the risk factors related to suicidal behavior.

LaFromboise and Howard-Pitney (1995) found mixed results regarding the curriculum’s impact on AI/AN students. The intervention group showed significantly fewer feelings of hopelessness and demonstrated a significantly higher level of suicide intervention skills than the no-intervention group. Intervention students also demonstrated significantly higher levels of problem-solving skills, but only in the more mild suicide scenario, and not in the more serious suicide scenario. But there were no significant effects on measures of suicide probability and depression.

Cherokee Talking Circle (CTC). CTC is a culturally based intervention targeting substance use among AI/AN adolescents. The program was designed for students who were part of the United Keetoowah Band of Cherokee Indians, the eighth largest tribe in Oklahoma. The goal of CTC is to reduce substance use, with abstinence as the ideal outcome. CTC integrates Keetoowah-Cherokee values into the intervention and is based on the Cherokee concept of self-reliance. The Keetoowah-Cherokee use self-reliance as part of their overall worldview that all things come together to form a whole. Keetoowah-Cherokee leaders note that self-reliance is a way of life that directly affects health and helps maintain balance (Lowe et al. 2012).

An evaluation by Lowe and colleagues (2012) found that CTC was significantly more effective overall in reducing substance use and other related problem behaviors among AI/AN adolescents, compared with noncultural, standard substance abuse education programs.

Bicultural Competence Skills Approach. This is an intervention designed to prevent abuse of tobacco, alcohol, and other drugs by AI/AN adolescents by teaching them social skills. Intervention groups are led by two AI/AN counselors and include 10 to 15 sessions, of 50 minutes each. Through cognitive and

behavioral methods tailored to the cultural prerogatives and reality of the lives of AI/AN youths, participants are instructed in and practice communication, coping, and discrimination skills. All sessions include discussion of AI/AN values, legends, and stories.

Schinke and colleagues (1988) found that at the 6-month follow up, program students were significantly more knowledgeable about substance use and abuse and held less favorable attitudes about substance use in the AI/AN culture; scored higher on measures of knowledge of substance abuse, self-control, alternative suggestions, and assertiveness; and reported less use of smoked tobacco, smokeless tobacco, alcohol, marijuana, and inhalants in the previous 14 days than their control group counterparts. At the 3-year follow up, Schinke, Tepavac, and Cole (2000) found that rates of smokeless tobacco, alcohol, and marijuana use were lower by 43 percent, 24 percent, and 53 percent, respectively, for those who received the life skills training, as compared with the control group.

Project Venture. This is an outdoor/experiential program that targets at-risk AI/AN youths. The program concentrates on AI/AN cultural values—such as learning from the natural world, spiritual awareness, family, and respect—to promote healthy, prosocial development. The goals of Project Venture are to help youths develop a positive self-concept, effective social and communication skills, a community service ethic, decision-making and problem-solving skills, and self-efficacy. By fostering these skills, the program aims to build generalized resilience; increase youths’ resistance to alcohol, tobacco, and other drugs; and prevent other problem behaviors.

At the 18-month follow up, Carter, Straits, and Hall (2007) found mixed results; however, overall the program had a significant effect on alcohol use. Treatment youths demonstrated less growth in substance use, as measured by the four outcome measures (cigarettes, marijuana, alcohol, and other illicit substances) taken together. However, looking at the outcome measures separately, there was a significant effect found only for alcohol use. The other substances followed trends similar to alcohol use, but were not significant.

For more information on the programs, please click on the links below.

- [American Indian Life Skills Development](#)
- [Cherokee Talking Circle](#)
- [Bicultural Competence Skills Approach](#)
- [Project Venture](#)

Outcome Evidence Limitations

Unfortunately, the impact of evidence-based programs for AI/AN youths is limited for reasons other than the often-cited lack of funding for tribal communities. First, although there are some studies that analyze the effectiveness of evidence-based programs on tribal populations (such as those described above), most evaluation research does not include AI/AN youths in study samples. Similarly, if AI/AN youths are included as part of the sample, the study does not usually include a subgroup analysis that could show how the program impacts AI/AN youths differently than other minority or non-minority youths. Second, even when tribal communities are interested in evidence-based programming, their concerns about whether the program aligns with tribal values can hinder widespread implementation (Walker et al. 2015). Third, not only are there differences between tribes and other minority groups, but there are also differences among the various tribes. As a result, a program that works in one tribal community may not work in others with different cultures, values, and philosophies (Melton 2004). For example, although the evaluation of Project Venture showed positive impacts on youths from the United Keetoowah Band of Cherokee Indians, the study noted that there were limitations to the

generalizability of the program to other tribes in other communities (Lowe et al. 2012). Finally, evaluation studies of evidence-based programs in tribal communities are often cited as having study limitations such as small sample size, short follow-up period, and the use of self-report measures instead of official measures of delinquency (Carter et al. 2007).

Recommendations from the Attorney General’s Advisory Committee

The Attorney General’s Advisory Committee on American Indian and Alaska Native Children Exposed to Violence was tasked with examining issues related to tribal youths’ exposure to violence, and developing recommendations to address these problems. A number of recommendations put forth by the Committee focused on providing needed funding to tribal communities, and improving the federal- and state-level responses to the violence-related issues that plague a large number of tribal communities and tribal youth (Dorgan et al. 2014). For instance, in 2013, as a result of sequestration, there was \$85 billion in federal cuts to programmatic funding for populations throughout Indian Country, including for education and child welfare programs that assist tribal youth (Center for Native American Youth 2013).

With regard to the juvenile justice system, the Committee made a number of recommendations to improve the processing and rehabilitation of tribal youths such as 1) providing publically funded legal representation, to ensure the protection of tribal youths’ rights and minimize the harm that the justice system may cause; 2) only using detention when youths pose a danger to themselves or the community, and providing individually tailored services (such as reentry services) when detention is necessary; and 3) providing trauma-informed, culturally appropriate screening, assessment, and care throughout the federal, state, and tribal justice systems (Dorgan et al. 2014).

Conclusion

Advocates say that more must be done for tribal youth, particularly those involved in the juvenile justice system. An understanding of the unique cultural differences of tribal youth, and the different risk and protective factors they face, compared with non-tribal youth, is an important step in developing comprehensive and culturally appropriate prevention and treatment services. More research is needed to gain a better understanding of the complicated issues that face tribal youth in today’s society, along with additional evaluations on interventions that target tribal youth, and how these interventions can be better implemented in tribal communities (Morsette et al. 2012; Walker et al. 2015). According to Arya and Rolnick (2009), federal and state government agencies, in cooperation with tribal communities, should sort out the “tangled web of justice” that tribal youths encounter if they come into contact with the juvenile justice system. In addition, juvenile justice staff, service providers, and others who work directly with youth should be trained in culturally appropriate and trauma-informed approaches to treatment (Dorgan et al. 2014).

References

- Adams, William, Julie Samuels, Janeen Buck Willison, Hannah Dodd, Meredith Dank, Barbara Parthasarathy, Kamala Mallik-Kane, Jessica Kelly, Sybil Mendonca, and KiDeuk Kim. 2011. *Tribal Youth in the Federal Justice System*. Washington, D.C.: Urban Institute.
- Arya, Neelum, and Addie Rolnick. 2009. “A Tangled Web of Justice: American Indian and Alaska Native Youth in Federal, State, and Tribal Justice Systems.” *Campaign for Youth Justice Policy Brief* 5: 1–25.
- Hartney, Christopher. 2008. “Native American Youth and the Juvenile Justice System.” *Focus: Views from the National Council on Crime and Delinquency*. Oakland, Calif.: National Council on Crime & Delinquency.

- Beauvais, F., P. Jumper–Thurman, and M. Burnside. 2008. “The Changing Patterns of Drug Use Among American Indian Students Over the Past 30 Years.” *American Indian & Alaska Native Mental Health Research: Journal of the National Center* 15(2): 15–24. <http://eric.ed.gov/?id=EJ822990>
- Carter, Susan L., Kee J.E. Straits, and McClellan Hall. 2007. *Project Venture: Evaluation of a Positive, Culture-Based Approach to Substance Abuse Prevention With American Indian Youth*. Technical Report. Gallup, N.M.: National Indian Youth Leadership Project.
- Cohen, Marcia, William Feyerherm, Elizabeth Spinney, Rachel Stephenson, and Martha Yeide. . *Disproportionate Minority Contact in the U.S. Juvenile Justice System: A Review of the DMC Literature, 2001–2010*. Submitted to OJJDP May 31, 2013. Bethesda, Md.: Development Services Group, Inc.
- Center for Native American Youth. 2013. *Sequestration: The Impact on the Most At-Risk Population–Native Youth*. Washington, D.C.: The Aspen Institute, Center for Native American Youth. http://www.aspeninstitute.org/sites/default/files/content/upload/Sequestration%20Paper_FIN_AL.pdf
- Development Services Group, Inc. 2013. *Protective Factors for Populations Served by the Administration on Children, Youth and Families: A Literature Review and Theoretical Framework*. Bethesda, Md.: Development Services Group, Inc.
- Dorgan, Bryon L., Joanne Shenandoah, Dolores Subia Bigfoot, Eric Broderick, Eddie F. Brown, Valerie Davidson, Anita Fineday, Matthew L.M. Fletcher, Jefferson Keel, Ron Whitener, and Marilyn J. Bruguier Zimmerman. 2014. *Attorney General’s Advisory Committee on American Indian and Alaska Native Children Exposed to Violence: Ending Violence So Children Can Thrive*. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention.
- Eid, Troy A., Affie Ellis, Tom Gede, Carole Goldberg, Stephnaie Herseth Sandlin, Jefferson Keel, Ted Quasula, Earl Ralph Pomeroy III, and Theresa Pouley. 2013. *A Roadmap for Making Native America Safer: Report to the President and Congress of the United States*. Washington, D.C.: Indian Law & Order Commission.
- Hockenberry, Sarah, and Charles Puzanchera. 2014. *Juvenile Court Statistics 2011*. Pittsburgh, Pa.: National Center for Juvenile Justice.
- Indian Health Service. 2015. *Year 2015 Profile*. Washington, D.C.: U.S. Department of Health and Human Services. http://www.ihs.gov/newsroom/includes/themes/newihstheme/display_objects/documents/factsheets/Profile.pdf
- LaFromboise, Teresa D., and Beth Howard–Pitney. 1995. “The Zuni Life Skills Development Curriculum: Description and Evaluation of a Suicide Prevention Program.” *Journal of Consulting Psychology* 42(4):479–86.
- LaFromboise, Teresa D., Dan R. Hoyt, Lisa Oliver, and Les B. Whitbeck. 2006. “Family, Community, and School Influences on Resilience among American Indian Adolescents in the Upper Midwest.” *Journal of Community Psychology* 34(2):193–209.
- Leiber, Michael J., Joseph Johnson, and Kristan Fox. 2006. *An Examination of the Factors that Influence Justice Decision Making in Anchorage and Fairbanks, Alaska: An Assessment Study*. Technical Report, prepared for the State of Alaska, Department of Health and Social Services, Division of Juvenile Justice.
- Lindquist, Christine, Tasseli McKay, Mindy Herman Stahl, Ada Pecos Melton, Rita Martinez, and David J. Melton. 2014. *Cross-Site Evaluation of the Office of Juvenile Justice and Delinquency Prevention Tribal Green Reentry Program*. Research Triangle Park: N.C.: RTI International.
- Listenbee, Robert L., Joe Torre, Gregory Boyle, Sharon W. Cooper, Sarah Deer, Deanne Tilton Durfee, Thea James, Alicia Lieberman, Robert Macy, Steven Marans, Jim McDonnell, Georgina Mendoza, and Antonio Taguba. 2012. *Report of the Attorney General’s National Task Force on Children Exposed to Violence*. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention.
- Litt, Jonathan, and Heather Valdez Singleton. (n.d.). *American Indian/Alaska Native Youth & Status*

- Offense Disparities: A Call for Tribal Initiative, Coordination & Federal Funding*. Washington, D.C.: Coalition for Juvenile Justice.
- Lowe, John, Huigang Liang, Cheryl Riggs, and Jim Henson. 2012. "Community Partnership to Affect Substance Abuse Among Native American Adolescents." *The American Journal of Drug and Alcohol Abuse* 38(5):450-55.
- Melton, Ada Pecos. 2004. *Building Culturally Relevant Youth Courts in Tribal Communities*. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention.
- Mmari, Kristin N., Robert Wm. Blum, and Nicolette Teugel-Shone. 2010. "What Increases Risk and Protection for Delinquent Behaviors Among American Indian Youth?" *Youth & Society* 41(3): 382-413.
- Morsette, Aaron, Gyda Swaney, Darrell Stolle, David Schuldberg, Richard van den Pol, Melissa Young. 2009. "Cognitive Behavioral Intervention for Trauma in Schools (CBITS): School-Based Treatment on a Rural American Indian Reservation." *Journal of Behavior Therapy and Experimental Psychiatry* 40(1):169-78.
- Motivans, Mark, and Howard Snyder. 2011. *Summary: Tribal Youth in the Federal Justice System*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.
- Norris, T., Vines, P. L., & Hoeffel, E. M. 2012. *The American Indian and Alaska Native Population: 2010*. Washington, D.C.: U.S. Department of Commerce, Economics and Statistics Administration. <http://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf>
- Ogunwole, S. U. 2006. *We the People: American Indians and Alaska Natives in the United States* (CENSR-28). Washington, D.C.: U.S. Census Bureau, U.S. Department of Commerce. <http://www.census.gov/prod/2006pubs/censr-28.pdf>
- Pavkov, Thomas, Leah Travis, Kathleen A. Fox, Connie Bear King, and Terry L. Cross. 2010. "Tribal Youth Victimization and Delinquency: Analysis of Youth Risk Behavior Surveillance Survey Data." *Cultural Diversity and Ethnic Minority Psychology* 14(2) 123-34.
- Pu, Jia, Better Cheuning, Iyekiyapiwin Darlene St. Clair, Patricia K. Kokotailo, Jeanne Lacourt, and Dale Wilson. 2013. "Protective Factors in American Indian Communities and Adolescent Violence." *Maternal and Child Health Journal* 17(7):1199-1207.
- Rodriguez, N. 2008. *A Multilevel Analysis of Juvenile Court Processes: The Importance of Community Characteristics*. Report submitted to the National Institute of Justice. <https://www.ncjrs.gov/pdffiles1/nij/grants/223465.pdf>
- Rountree, Jen. 2015. *American Indian and Alaska Native Youth in the Juvenile Justice System*. Baltimore, Md.: The Technical Assistance Network for Children's Behavioral Health.
- Substance Abuse and Mental Health Services Administration. 2013. "Addressing Substance Use in Tribal Communities." *SAMHSA News* 21(1). http://media.samhsa.gov/samhsaNewsletter/Volume_21_Number_1/tribal_communities.aspx
- Schinke, Steven P., Gilbert J. Botvin, Joseph E. Trimble, Mario A. Orlandi, Lewayne D. Gilchrist, and Von S. Locklear. 1988. "Preventing Substance Abuse Among American-Indian Adolescents: A Bicultural Competence Skills Approach." *Journal of Consulting Psychology* 35(1):87-90.
- Schinke, Steven P., Lela Tepavac, and Kristin C. Cole. 2000. "Preventing Substance Use Among Native American Youth: Three-Year Results." *Addictive Behaviors* 25(3):387-97.
- Tribal Law and Policy Institute. (n.d.). *General Guide to Criminal Jurisdiction in Indian Country*. Accessed on October 20, 2015, <http://www.tribal-institute.org/lists/jurisdiction.htm>
- Walker, Sarah Cusworth, Rob Whitener, Eric W. Trupin, and Natalie Migliarini. 2015. "American Indian Perspectives on Evidence-Based Practice Implementation: Results from a Statewide Tribal Mental Health Gathering." *Administration and Policy in Mental Health and Mental Health Services Research* 42: 29-39.

Whitbeck, Les B., Dan R. Hoyt, Herry D. Stubben, and Teresa LaFromboise. 2001. "Traditional Culture and Academic Success among American Indian Children in the Upper Midwest." *Journal of American Indian Education* 40(2): 48-60.

Tribal Court Protective Orders:
NO EASY TASK: DRAFTING
ENFORCEABLE TRIBAL
PROTECTION ORDERS



JUDICIAL COUNCIL
OF CALIFORNIA
OPERATIONS AND PROGRAMS DIVISION
CENTER FOR FAMILIES, CHILDREN & THE COURTS

June 22, 2018
455 Golden Gate Ave
Lower Level
San Francisco, CA

Agenda

Friday, June 22, 2018

10:00 –	10:15 a.m.	<p>Welcome and Introductions</p> <p>Welcome. Introduction of faculty and hosts. Introduction of the vital role of the victim advocate in this training. CLE information and housekeeping issues. Overview of the inter-active training expectations</p>
10:15 –	11:00 a.m.	<p>Advocate's Role and Parts of the Protection Order- Heading, Intro and Procedural Posture</p> <p>The advocate will detail the role of the advocate, victim-driven focus (victim empowerment, trauma-informed services and victim autonomy) and the safety/lethality concerns of the protection order process. The faculty will present information on the identified parts of a protection order. The advocate will instruct participants on victim-driven issues and/or safety/lethality issues presented.</p>
11:00 a.m. –	12:00 p.m.	<p>Parts of the Protection Order- Jurisdiction (Subject Matter, Personal, Territorial) and Due Process</p> <p>The advocate will detail the role of the advocate, victim-driven focus (victim empowerment, trauma-informed services and victim autonomy) and the safety/lethality issues presented. The faculty will present information on the identified parts of a protection order and engage the participants in a group drafting exercise. The advocate will instruct participants on victim-driven issues and/or safety/lethality issues presented.</p>
12:00 –	1:00 p.m.	<p>Working Lunch (<i>lunch provided</i>)</p> <p>Group exercise (2-5 people per group) Groups will discuss issues of enforcement in their communities and priorities for education and technical assistance on protective orders</p>

1:00 –	2:15 p.m.	<p>Parts of the Protection Order- Findings and Remedies</p> <p>The advocate will detail the role of the advocate, victim-driven focus (victim empowerment, trauma-informed services and victim autonomy) and the safety/lethality concerns presented on the identified parts of the protection order. The faculty will present information on the identified parts of a protection order and engage the participants in a large group exercise related to identifying and drafting the finding and remedies in a protection order. The advocate will instruct participants on victim-driven issues and/or safety/lethality issues presented.</p>
2:15 –	2:30 p.m.	Break
2:30 –	3:30 p.m.	<p>Parts of the Protection Order- Warnings</p> <p>The advocate will detail the role of the advocate, victim-driven focus (victim empowerment, trauma-informed services and victim autonomy) and the safety/lethality concerns of the identified portion of a protection order. The faculty will present information on the identified parts of a protection order. The advocate will instruct participants on victim-driven issues and/or safety/lethality issues presented.</p>
3:30 –	4:00 p.m.	<p>Report Back, Debrief, and Next Steps</p> <p><i>Hon. Jerilyn Borack</i> <i>Hon. Mark A. Juhas</i></p>

NOT AN EASY TASK: DRAFTING ENFORCEABLE TRIBAL PROTECTION ORDERS





Presenter

Kelly Stoner
Victim Advocate Legal Specialist
Tribal Law and Policy Institute

Objectives of Presentation

1. Identify the parts of a protection order.
2. Demonstrate an understanding of the importance of each part of the protection order relative to enforcing the protection order.
3. Explain the importance of full faith and credit regarding protection orders.
4. Practice drafting enforceable protection orders.
5. Develop a plan to assess enforcement issues your tribal victim advocates are experiencing with respect to enforcement of protection orders.

PARTS OF A FINAL PROTECTION ORDER

1. Heading or style
2. Introduction and procedural posture
3. Jurisdiction over the subject matter, person and due process
4. Findings
5. Remedies
6. Warnings to respondent
7. Service language

Style or Heading

- Which court is hearing the case
- Names the parties
- Type of case
- Court docket number
- NCIC identifiers

Introduction

- ✓ Which judge is presiding over the case
- ✓ Date the court hearing is held
- ✓ Who appeared before the judge and whether each party is Indian or non-Indian
- ✓ If counsel appears lists counsel's names
- ✓ How the case came before the judge (what was filed and when to get to this point)
- ✓ List the citation to the protection order statute

Jurisdiction Over the Subject Matter, Person and Due Process

- ❖ What tribal constitutional provision states that this court may hear this types of case
- ❖ What tribal code provision(s) indicates that this court may hear this case
- ❖ If either party is non-Indian, be sure to explain clearly the jurisdictional basis (VAWA 2013 codified at 18 USC 2265(e)) or address the *Montana* test.

Jurisdiction Over the Subject Matter, Person and Due Process

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.

Jurisdiction Over the Subject Matter, Person and Due Process

The *Montana* test requires the tribal court to find that: **1)** the parties entered into a consensual relationship with the tribe or its members through commercial dealing, contracts, leases or “other arrangements” **or 2)** the conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. If neither of the two factors listed in the Montana test are present, the tribal courts may not exercise civil jurisdiction over non-members on non-Indian lands.

GROUP EXERCISE

Extract the elements of subject matter jurisdiction
AND
Design a paragraph that you feel is jurisdictionally sound

LARGE GROUP DISCUSSION

Jurisdiction Over the Subject Matter, Person and Due Process

- ✓ List any requirements in the statute regarding who may file a protection order
- ✓ Identify any contacts the petitioner and defendant have to the tribe (Examples: members, work for tribe, child is a member)
- ✓ Identify what the statute requires to serve a protection order
- ✓ Identify what the statute requires with respect to hearing dates if this is an emergency protection order

Jurisdiction Over the Subject Matter, Person and Due Process

- ✓ Identify whether the defendant has been served with a copy of the petition in compliance with the tribal statute
- ✓ Identify whether the court date has been scheduled according to any timelines set out in the tribal statute
- ✓ If the defendant appeared, was the defendant provided an opportunity to tell the defendant's side of the story or ask questions of the petitioner

Critical Protection Order Language

- ▶ In order to be provided full faith and credit the following specific VAWA requirements in 18 U.S.C. 2265(b) need to be met and in the Protection Order:
- ▶ The court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and
- ▶ 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.

GROUP EXERCISE

Draft a paragraph that indicates the tribal court had jurisdiction over the person and due process was provided to the defendant according to the tribal statute.

FINDINGS

- ❖ Important because it is a part of the order and lists exactly what the judge finds to be true
- ❖ May kick in presumptions for custody issues
- ❖ May set up habitual offender prosecutions later
- ❖ May provide some of the elements of Special Domestic Violence Criminal Jurisdiction

FINDINGS

- ❖ List exactly what the judge believes to be true
- ❖ Needs to be clear and detailed
- ❖ You may have to request this from the Judge
- ❖ Note that the testimony/evidence must support the finding
- ❖ Remember the Affidavit or Petition will contain some of the petitioner's story

GROUP EXERCISE

Based on the fact pattern, prepare a paragraph of findings you would want the judge to make in this case.

REMEDIES

- ❖ Is the trip wire for the defendant
- ❖ Each provision is a command of the court that addresses the safety needs of the petitioner
- ❖ Must be requested by petitioner in most cases
- ❖ May determine whether law enforcement will enforce the protection order
- ❖ May determine whether or not a prosecutor will prosecute a violation

REMEDIES

- Review what type of remedies the tribal statute provides- a judge can only provide remedies within the statutory parameters
- Does the tribal statute have any wiggle room for the judge to provide the judge with discretion in crafting the protection order to meet the petitioner's needs?

GROUP EXERCISE

1. Make a comprehensive list of remedies that this client needs
2. After making a list of the remedies you feel the client needs, review the statute to determine whether those remedies are within the statutory parameters
3. Write two remedies as tightly as you can knowing that a defendant will wiggle out of any loopholes when enforcement becomes an issue.

WARNINGS TO THE DEFENDANT

- ✓ Usually in all caps and bold indicating a violation of the order is a crime and/or may be civilly enforced
- ✓ May alert the defendant that the order is entitled to full faith and credit in every tribe, state and territory
- ✓ May alert the defendant to firearms and ammunition prohibitions
- ✓ May alert the defendant that the petitioner cannot violate the order as the order is a command to the defendant

Service Language

- Determine how the tribal statute indicates the defendant must be served with a copy of the order if the defendant is not present in the courtroom
- If the defendant is present, be sure to indicate in the protection order that the defendant is served with a copy of the order in open court

Federal Firearms Prohibition

A person subject to a qualifying protection order is prohibited from possessing any firearm or ammunition.

To be a qualified protection order:

- Must be issued after a hearing in which Respondent had actual notice and an opportunity to be heard.

To Invoke the Federal Firearms Prohibition This Language Must Be Present

Restrain the person from:

- ✓ Harassing, stalking or threatening an intimate partner (or the child of the restrained part or the intimate partner) OR
- ✓ Engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the person or child

Must also include:

- ✓ A finding that the Respondent represents a credible threat to the person, OR
- ✓ An explicit prohibition against the use, attempted use or threatened use of physical force which would reasonably cause bodily injury

RESOURCES

Tribal Jurisdictional Charts and info: <http://www.tribal-institute.org/lists/pl280.htm>; <http://www.tribal-institute.org/lists/jurisdiction.htm>; www.tribalprotectionorders.com

Confidentiality for tribal victims: <http://www.tribal-institute.org/download/NativeVictimsSexualAssault.pdf>; <http://www.niwrc.org/resources/webinars>

Tribal Victim Rights: www.victimlaw.org; http://www.ncai.org/tribal-vawa/webinars/Webinar_PPT_RE_Victim_Rights_Part_I.pdf

Tribal Protection Orders: www.tribalprotectionorders.org

VAWA 2013: http://tribal-institute.org/lists/vawa_2013.htm; <http://www.ncai.org/tribal-vawa>

Sexual Assault: <http://niccsa.org/>

Sex Trafficking in Indian country: www.tribalcoalitions.org

Victim Services for sex trafficking victims: www.tribalcoalitions.org

Violence Against Tribal Women and Children: Ending Violence So Children Can Thrive: www.justice.gov/defendingchildhood

THANK YOU!!!

Questions?

Kelly Stoner, Seminole Nation of Oklahoma Tribal Judge; Tribal Law and Policy Institute, Victim Advocate Legal Specialist

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405-226-2050

STATUTES FOR ENFORCEABLE PROTECTION ORDER EXERCISE

JURISDICTION OVER THE SUBJECT MATTER:

§ 3–401. Civil jurisdiction The District Court has full civil jurisdiction to issue protection orders if the petitioner currently or temporarily resides in the Muscogee (Creek) Nation territorial jurisdiction, if the respondent currently or temporarily resides in the Muscogee (Creek) Nation territorial jurisdiction or if the domestic or family violence occurred in the Muscogee (Creek) Nation territorial jurisdiction; provided that such civil jurisdiction may be exercised regardless of the Indian or non-Indian status of petitioners and respondents. There is no minimum requirement of residency to petition the District Court for an order for protection. In accordance with 18 U.S.C. § 2265(e), the District Court has full civil jurisdiction to enforce protection orders issued by the District Court and to enforce foreign protection orders pursuant to Title 6, §§ 3–415, 3–416 and 6–3–417.

Federal Cross-Reference:

(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.

JURISDICTION OVER THE PERSON:

Federal Rules of Civil Procedure 4.

(e) SERVING AN INDIVIDUAL WITHIN A JUDICIAL DISTRICT OF THE UNITED STATES. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by:

- (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or
- (2) doing any of the following:
 - (A) delivering a copy of the summons and of the complaint to the individual personally;
 - (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
 - (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

Note: Generally, jurisdiction over the person can be obtained by:

- Presence in the jurisdiction
- Domicile or place of business in the jurisdiction
- Consent to jurisdiction
- Minimum contact with the jurisdiction (enough interaction to justify tribal court exercising jurisdiction over the matter)
- Tortious injury in the jurisdiction
- Owning property in the jurisdiction

NOTICE AND OPPORTUNITY TO BE HEARD

AST Dom. Viol. Code 7.

a. A copy of the petition, notice of hearing and a copy of any emergency ex parte order issued by the court shall be served upon the defendant in the same manner as a summons. Emergency ex parte orders shall be given priority for service and can be served twenty-four (24) hours a day when the location of the defendant is known. An emergency ex parte order, a petition for protective order, and a notice of hearing may be transferred to any law enforcement jurisdiction to effect service upon the defendant. When the defendant is a minor child who is ordered removed from the residence of the victim, in addition to those documents served upon the defendant, a copy of the petition, notice of hearing and a copy of any ex parte order issued by the court shall be delivered with the child to the caretaker of the place where such child is taken.

b. Within fifteen (15) days of the filing of the petition for a protective order, the court shall schedule a full hearing on the petition, regardless of whether an emergency ex parte order has been previously issued, requested, or denied. Provided, however, when the defendant is a minor child who has been removed from the residence, the court shall schedule a full hearing on the petition within seventy-two (72) hours, regardless of whether an emergency ex parte order has been previously issued, requested, or denied. The court may schedule a full hearing on the petition for a protective order within seventy-two (72) hours when the court issues an emergency ex parte order suspending child visitation rights due to physical violence or threat of abuse. If service has not been made on the defendant at the time of the hearing, the court shall continue the hearing. A petition for a protective order shall automatically renew every fifteen (15) days until the defendant is served. A petition for a protective order shall not expire and must be dismissed by court order. Failure to serve the defendant shall not be grounds for dismissal of a petition or an ex parte order unless the victim requests a dismissal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Note: These are findings and conclusions the Judge has made after assessing the credibility of the witnesses, evaluating the evidence, considering arguments of counsel (or parties if unrepresented by counsel). Therefore, in an emergency protection order you will have to massage this language to reflect the court has assessed the credibility of the applicant, evaluated the testimony.

Tulalip:

4.25.480 Persons authorized to file.

(1) A petition to obtain a protection order under this section may be filed by:

(a) Any person claiming to be the victim of domestic violence, family violence, dating violence or stalking; or

(b) Any family member or household member of a minor or vulnerable adult alleged to be the victim of domestic violence, family violence, dating violence or stalking on behalf of the minor or vulnerable adult; or

(c) The Tribal Prosecutor; or

(d) Any person acting in an official capacity in the protection of domestic violence, family violence, dating violence or stalking survivors including but not limited to Legacy of Healing staff, elder abuse case managers or advocates, Child Advocacy Center, therapists, victim advocate service provider (added) case managers on behalf of a child, or other advocate acting in a professional capacity. [Res. 2013-379; Ord. 117 § 1.11, 11-5-2001 (Res. 2001-365). Formerly 4.25.110(1)(a)].

4.25.490 Petition for protection order or modification.

(1) A petition shall allege the existence of domestic violence, family violence, dating violence, or stalking, and shall be supported by an affidavit made under oath stating the specific facts and circumstances justifying the requested order.

(2) A petition may be filed regardless of the pendency of any other civil or criminal proceeding related to the allegations in the petition.

(3) No filing fee shall be required for the filing of a petition under this section. If an alleged perpetrator has been arrested for the offense of domestic violence, family violence, dating violence or stalking, the Court or the arresting Police Officer shall advise the alleged victim of the right to file a petition under this section without cost.

(4) The petitioner, or the victim on whose behalf a petition has been filed, is not required to file for annulment, separation, or divorce as a prerequisite to obtaining a protection

order. However, the petition shall state whether any other action is pending between the petitioner or victim and the respondent.

(5) The Court shall make available standard, simplified petition forms and instructional brochures with instructions for completion. The Tulalip Police Department and the Tribal Court shall make such forms available upon request to victims of domestic violence, family violence, dating violence, or stalking.

(6) Once a petition has been filed, the Court Clerk shall conduct a criminal background check according to Court policy and attach the report(s) to the petition. [Res. 2013-379; Ord. 117 § 1.11, 11-5-2001 (Res. 2001-365). Formerly 4.25.110(1)(b) – (f)].

Sisseton-Whapeton Oyate: Definition of Domestic Violence/Domestic Abuse

Attempting to cause or causing physical harm to another family or household member;

(b) (c)

Definitions. Unless the context otherwise requires, as used in the SWST Domestic Violence Ordinance:

I. "Domestic violence/abuse" means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense:

- (a) Attempting to cause or causing physical harm to another family or household member;
- (b) Placing a family or household member in fear of physical harm; or
- (c) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.

Fact Pattern: (to be handed out separately)

Full Faith and Credit Language: (on Powerpoint). Just be sure you have met the requirements of explaining why the tribal court has subject matter and personal jurisdiction and that due process (notice and opportunity to be heard have or will be provided to the defendant within the time parameters set out in the tribal code.

Federal Firearms Language (18 USC 922(g)(8)) : To engage the federal firearms restrictions, the protection order must:

- restrain such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(A)

was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)

(i)

includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii)

by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9)

has been convicted in any court of a misdemeanor crime of domestic violence.

NOTE: The exception to this possession is found at 18 USC 925 which sets forth this restriction does not apply to firearms issued by government agencies to a law enforcement officer or military personnel so long as the individual is on duty.

REMEDIES:

Tulalip

4.25.510 Contents of a protection order.

An ex parte protection order or a protection order entered after notice and hearing may, when deemed appropriate by the Court, include provisions:

(1) Restraining the respondent from committing acts of domestic violence, family violence, dating violence, or stalking.

(2) Excluding the respondent from the residence, workplace, school, and grounds of dwelling of the victim or other specific location where the victim can be found on a regular basis, whether or not the respondent and the victim share that residence.

(3) Restraining the respondent from any contact with the victim and his or her family or household members as is necessary for their safety and welfare.

(4) Awarding temporary custody or establishing temporary visitation rights with regard to minor children of the respondent on a basis that gives primary consideration to the safety of the claimed victim of domestic violence and the minor children.

(a) In every proceeding where there is at issue a dispute as to the custody of a minor child, a determination by the Court that domestic violence or family violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of domestic violence or family violence.

(b) In every proceeding where there is at issue a dispute as to the custody of a minor child, a determination by the Court that domestic violence, family violence, sexual assault, or stalking has occurred raises a rebuttable presumption that it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic violence, family violence, sexual assault, or stalking in the location of that parent's choice.

(c) In every proceeding where there is at issue the modification of an order for custody or visitation of a minor child, the finding that domestic violence, family violence, sexual assault, or stalking has occurred since the last custody determination constitutes a finding of a change in circumstances.

(d) If the Court finds that the safety of the claimed victim or the minor children will be jeopardized by unsupervised or unrestricted visitation, the Court shall set forth conditions or restrict visitation as to the time, place, duration, or supervision, or deny visitation entirely, as needed, to guard the safety of the claimed victim and the minor children.

(e) In determining custody and/or visitation, the Court must consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault to another person.

(f) If a parent is absent or relocated because of an act of domestic violence or family violence by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation.

(g) Any temporary custody order shall provide for child support and temporary support for the person having custody of the children, in amounts deemed proper by the Court.

(h) In a visitation order, the Court may:

(i) Order an exchange of a minor child to occur in a protected setting;

(ii) Order that visitation be supervised by another person or agency at the perpetrator of domestic violence or family violence's expense;

(iii) Order the perpetrator of domestic violence or family violence to attend and complete, to the satisfaction of the Court, a program of intervention for perpetrators or other designated counseling as a condition of the visitation;

(iv) Order the perpetrator of domestic violence or family violence to abstain from possession or consumption of alcohol, controlled substances or abuse of prescription drugs during the visitation and for 24 hours preceding the visitation and may order submission of a UA prior to the visit;

(v) Prohibit overnight visitation;

(vi) Require a Court-approved bond from the perpetrator of domestic violence or family violence for the return and safety of the minor child; and

(vii) Impose any other condition that is deemed necessary to provide for the safety of the minor child, the victim of domestic violence or family violence, or other family or household member.

(i) Whether or not visitation is allowed, the Court may order the address of the minor child and the victim to be kept confidential.

(j) The Court may refer but may not order an adult who is a victim of domestic violence or family violence to attend counseling relating to the victim's status or behavior as a victim, as a condition of receiving custody of a minor child or as a condition of visitation.

(k) If the Court allows a family or household member to supervise visitation, the Court must establish, in writing, conditions to be followed during visitation.

(l) The Court shall notify the restrained party that the willful violation of any provision of the protection order is a criminal offense and punishable by imprisonment and/or a fine.

(5) Ordering temporary guardianship with regard to an elderly or vulnerable adult victim of domestic violence, family violence, sexual assault, or stalking if necessary for the safety of the elderly or vulnerable adult until the matter can be addressed through an action pursuant to Chapter [4.30](#) TTC.

(6) Awarding temporary use and possession of property of the respondent.

(7) Restraining one or both parties during the pendency of the action from transferring, encumbering, concealing, or disposing of property except as authorized by the Court and requiring that an accounting shall be made to the Court for all such transfers, encumbrances, dispositions, and expenditures.

(8) Ordering the respondent to timely pay any existing debts of the petitioner, including mortgage or rental payments, necessary to maintain the claimed victim in his/her residence.

(9) Describing any prior orders of the Court relating to domestic matters which are superseded or altered by the protection order.

(10) Notifying the parties that the willful violation of any provision of the order constitutes contempt of court punishable by a fine or imprisonment or both and constitutes a violation of this code for which civil penalties may be assessed.

(11) If the victim or alleged victim is awarded temporary use of the house and is listed on the rental agreement, the landlord, including Tribal housing, shall at the request of the petitioner change the locks within 24 business hours of issuance of the order.

(12) Ordering law enforcement to assist the victim in removing essential personal effects from a shared home.

(13) Order that the respondent may not come within 500 feet of the Legacy of Healing building or safe house, regardless of whether the victim is there.

(14) Ordering, in the Court's discretion, any other lawful relief as it deems necessary for the protection of any claimed or potential victim of domestic violence or family violence, including orders or directives to the Tulalip Police Department. [Res. 2013-379; Ord. 117 § 1.11, 11-5-2001 (Res. 2001-365). Formerly 4.25.110(3)].

4.25.520 Duration of permanent protection order and modification.

(1) The provisions of the order shall remain in effect for the period of time stated in the order, not to exceed one year unless extended by the Court at the request of any party or at the request of the Legacy of Healing program.

(2) The Court in its discretion may upon request of either party or the Legacy of Healing program modify a protection order.

(3) By the Petitioner. Before the Court may modify or reconsider a protection order at the request of the petitioner, if children live in the home, the Court may require petitioner to attend a domestic violence support group, with a session focused on the effects of domestic violence on children.

(4) By the Respondent. Before the Court may modify or reconsider a protection order at the request of the respondent, he or she shall provide the Court with all pertinent documents, affidavits, compliance forms or any other information required by the Court for either reconsideration or modification of protection orders. [Res. 2013-379; Ord. 117 § 1.11, 11-5-2001 (Res. 2001-365). Formerly 4.25.110(4)].

WARNINGS TO THE DEFENDANT

(Oklahoma)

WARNINGS TO DEFENDANT AND PROTECTED PERSON(S):

1. The filing or non-filing of criminal charges and the prosecution of the case shall not be determined by a person who is protected by the protective order but shall be determined by the prosecutor.

2. No person, including a person who is protected by the order, may give permission to anyone to ignore or violate any provision of the order. During the time in which the order is valid, every provision of the order shall be in full force and effect unless a court changes the order.

3. The order will be in effect for a maximum of five (5) years unless extended, modified, vacated or rescinded by the court.

4. A violation of the order is punishable by a fine of up to One Thousand Dollars (\$1,000.00) or imprisonment for up to one (1) year in the county jail, or by both such fine and imprisonment. A violation of the order which causes injury is punishable by imprisonment for twenty (20) days to one (1) year in the county jail or a fine of up to Five Thousand Dollars (\$5,000.00), or by both

such fine and imprisonment. Additional offenses and penalties are provided in federal and state law, including 22 O.S. §60.6.

5. Possession of a firearm or ammunition by a defendant while an order is in effect may subject the defendant to prosecution for a violation of federal law even if the order does not specifically prohibit the defendant from possession of a firearm or ammunition.

6. As a result of this order, it MAY be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition pursuant to federal law under 18 U.S.C. 922(g)(8).

7. Any person who knowingly and willfully presents any false or materially altered protective order to any law enforcement officer to effect an arrest of any person shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a period not to exceed two (2) years, or by a fine not exceeding \$5,000.00, and shall in addition be liable for any civil damages to the Defendant.

8. This Order complies with the Violence Against Women Act's full faith and credit provision (18 U.S.C. §2265) and his Order is enforceable throughout Oklahoma and in all 50 states, U.S. territories, Tribal Land and the District of Columbia.

1 **The Court Finds Based Upon the Court Record:**

2 The court has jurisdiction over the parties, the minors, and the subject matter and respondent has been provided with
3 reasonable notice and an opportunity to be heard. Notice of this hearing was served on the respondent by
4 personal service service by mail pursuant to court order service by publication pursuant to court order
 other

This order is issued in accordance with the Full Faith and Credit provisions of VAWA: 18 U.S.C. § 2265.

5 Respondent's relationship to the victim is:

- 6 spouse or former spouse current or former dating relationship in-law parent or child
7 parent of a common child stepparent or stepchild blood relation other than parent or child
8 current or former cohabitant as intimate partner, current or former cohabitant as roommate
9 including current or former registered domestic partner

10 Respondent committed domestic violence as defined in TTC 4.25 and represents a credible threat to the physical safety of
11 petitioner; the court concludes as a matter of law the relief below shall be granted.

12 **Court Order Summary:**

- 13 Respondent is restrained from committing acts of abuse as listed in restraint provisions 1 and 2.
14 No-contact provisions apply as set forth on the following pages.
15 Additional provisions are listed on the following pages.

16 **The terms of this order shall be effective immediately and for one year from today's date, unless stated
17 otherwise here (date):**

18

19 **It is Ordered:**

- 20 1. Respondent is **Restrained** from causing physical harm, bodily injury, assault, including sexual
21 assault, and from molesting, harassing, threatening, or stalking petitioner the minors
22 named in the table above these minors only:
23
24 (If the respondent's relationship to the petitioner is that of spouse or former spouse, parent of a common
25 child, or former or current cohabitant as intimate partner, including current or former registered domestic
26 partner, then effective immediately, and continuing as long as this protection order is in effect, **the
27 respondent may not possess a firearm or ammunition.** 18 U.S.C. § 922(g)(8). A violation of this
28 federal firearms law carries a maximum possible penalty of 10 years in prison and a \$250,000 fine. An
exception exists for law enforcement officers and military personnel when carrying
department/government-issued firearms. 18 U.S.C. § 925(a)(1).)
2. Respondent is **Restrained** from harassing, following, keeping under physical or electronic
surveillance, and using telephonic, audiovisual, or other electronic means to monitor the actions,
locations, or wire or electronic communication of petitioner the minors named in the table
above only the minors listed below members of the victim's household listed below the
victim's adult children listed below:
3. Respondent is **Restrained** from coming near and from having any contact whatsoever, in
person or through others, by phone, mail, or any means, directly or indirectly, except for mailing
or service of process of court documents by a 3rd party or contact by Respondent's lawyer(s)
with petitioner the minors named in the table above these minors only:
- If both parties are in the same location, respondent shall leave.

4. Respondent is **Excluded** from petitioner's residence workplace school; the day care or school of the minors named in the table above these minors only:

Other

Petitioner's address is confidential. Petitioner waives confidentiality of the address which is:

5. Petitioner shall have exclusive right to the residence that petitioner and respondent share. The respondent shall immediately **Vacate** the residence. The respondent may take respondent's personal clothing and tools of trade from the residence while a law enforcement officer is present.

This address is confidential. Petitioner waives confidentiality of this address which is:

6. Respondent is **Prohibited** from knowingly coming within, or knowingly remaining within _____ (distance) of: petitioner's residence workplace school; the day care or school of the minors named in the table on page one these minors only:

Other:

7. Petitioner shall have possession of essential personal belongings, including the following:

8. Petitioner is granted use of the following vehicle:

Year, Make & Model _____ License No. _____

9. Other:

10. Respondent shall participate in treatment and counseling as follows:

domestic violence perpetrator treatment program approved under TTC 4.25 or counseling at:

parenting classes at: _____

drug/alcohol treatment at: _____

other:

11. Parties shall return to court on _____, at _____ .m. for review.

12. Other:

Complete only if the protection ordered involves minors: This Tribe has exclusive continuing jurisdiction.

13. Petitioner is **Granted** the temporary care, custody, and control of the minors named in the table above these minors only:

14. Respondent is **Restrained** from interfering with petitioner's physical or legal custody of the minors named in the table above these minors only:

15. Respondent is **Restrained** from removing from the state the minors named in the table above these minors only:

16. The respondent will be allowed visitations as follows: _____

Petitioner may request modification of visitation if respondent fails to comply with treatment or counseling as ordered by the court.

If the person with whom the child resides a majority of the time plans to relocate the child, that person must comply with the notice requirements of the Child Relocation Act. Persons entitled to time with the child under a court order may object to the proposed relocation.

Warnings to the Respondent: A violation of provisions 1 through 6 of this order with actual notice of its terms is a criminal offense under chapter 4.25 TTC and will subject you to arrest. If the violation of the protection order involves travel across a state line or the boundary of a tribal jurisdiction, or involves conduct within the special maritime and territorial jurisdiction of the United States, which includes tribal lands, you may be subject to criminal prosecution in federal court under 18 U.S.C. §§ 2261, 2261A, or 2262.

If you are *NOT* a member of a federally-recognized Indian Tribe, Tulalip Tribal Code or Washington State law may apply. Under state law, violation of provisions 1 through 6 of this order with actual notice of its terms is a gross misdemeanor unless one of the following conditions apply: Any assault that is a violation of this order and that does not amount to assault in the first degree or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony. Any conduct in violation of this order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony. Also, a violation of this order is a class C felony if you have at least two previous convictions for violating a protection order issued under Titles 7, 10, 26 or 74 RCW.

If you are convicted of an offense of domestic violence, you will be forbidden for life from possessing a firearm or ammunition. 18 U.S.C. § 922(g)(9); RCW 9.41.040.

You Can Be Arrested Even if the Person or Persons Who Obtained the Order Invites or Allows You to Violate the Order's Prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application.

Pursuant to 18 U.S.C. § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the order.

WACIC Data Entry

It is further ordered that the clerk of the court shall forward a copy of this order on or before the next judicial day to _____ County Sheriff's Office County Clerk's Office Tulalip Police Department *Where Petitioner Lives* which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

Service

- The clerk of the court shall also forward a copy of this order on or before the next judicial day to _____ County Sheriff's Office County Clerk's Office Tulalip Police Department **Where Respondent Lives** which shall personally serve the respondent with a copy of this order and shall promptly complete and return to this court proof of service.
- Petitioner shall serve this order by mail publication.
- Petitioner shall make private arrangements for service of this order.
- Respondent appeared and was informed of the order by the court; further service is not required.
- Respondent was served with notice of the hearing and did not appear; further service is not required.

- Law enforcement shall assist petitioner in obtaining:
 - Possession of petitioner's residence personal belongings located at: the shared residence respondent's residence other: _____
 - Custody of the above-named minors, including taking physical custody for delivery to petitioner.
 - Possession of the vehicle designated in paragraph 7, above.
 - Other: _____
- Other: _____

This Order is in Effect Until the Expiration Date on Page TWO

If the duration of this order exceeds one year, the court finds that an order of one year or less will be insufficient to prevent further acts of domestic violence.

Dated: _____ at _____ a.m./p.m.

Judge

Presented by: _____

I acknowledge receipt of a copy of this Order: _____

Petitioner

Date

Respondent

Date

The petitioner or petitioner's lawyer must complete a Law Enforcement Information Sheet (LEIS).

FACT PATTERN

Karen and Steve have been married to each other for six years and have one child of the marriage, Lizzy (age 4 months). Steve is a member of the federally recognized Deer tribe of Indians. Karen is enrolled in an unrecognized tribe known as the Northern Deer Tribe. Up until one year ago, Karen and Steve resided on trust land and Karen worked for the Deer Tribe and has always utilized IHS services for herself and Lizzy. Karen participates in tribal functions and is considered a part of the Deer tribal community. Lizzy is enrolled in the Deer Tribe.

One month ago, Karen and Steve moved off trust land (Indian country or Village) into the City of Idabel, McCurtain County. Their relationship began to get rocky shortly after the move. Karen has always been controlling but in the past twelve months, Karen has become physical striking Steve and often throwing items at Steven when Steve failed to comply with Karen's demands. Lizzy was accidently struck in the most recent episode, which occurred this past week. The police were called, and a report was generated.

In this latest episode, Karen had been drinking and accused Steve of infidelity-which Steve denied. Karen through a cast iron skillet at Steve, which landed on Lizzy causing some bruising. Karen also kicked the family dog and put the dog outside for the night when the temperatures were to fall below freezing. Karen held a knife up and told Steve he may not live through the night. While Karen went back to the kitchen, Steve took Lizzy and left returning to his tribal home on trust land. Karen filed for divorce the next day in the state court located in Idabel.

In the petition, Karen requested a divorce and custody of Lizzy. Steve was served with divorce/custody papers three days ago while he was in Idabel. Steve promptly went to the Deer Tribal court and filed for a Protective Order for Steve and Lizzy in the tribal court. Steve and Lizzy were granted an emergency Protective Order in the tribal court and the tribal court set the matter down for a permanent hearing on March 23, 2018. The divorce in Idabel and the Protection Order in tribal court are pending



(<http://tribalprotectionorder.org>)

Tips for Drafting Jurisdiction and Due Process Provisions

Jurisdiction refers to the power or authority of a court over a particular subject matter, territory and person. Jurisdiction is one of the most confusing aspects of tribal law. From a tribal perspective, tribal jurisdiction to issue and enforce protection orders is based upon inherent tribal sovereignty. Nevertheless, federal laws have placed some restrictions upon a tribe's inherent sovereign powers to issue and enforce protection orders in matters involving non-members making a determination whether a tribe has the power to issue protection orders complex.

1. Subject Matter Jurisdiction

Section 2265 (e) clarified tribal court jurisdiction to issue protection orders over members and non-members for matters arising in Indian country.

18 U.S.C. 2265(e) (updated 2013)

(<http://www.law.cornell.edu/uscode/text/18/2265>)

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.

In matters arising outside of Indian Country involving non-members, the federal restrictions on tribal civil jurisdiction may still apply. Two U.S. Supreme Court cases held that tribes have limited powers over matters involving non-members on non-Indian lands. *Montana v. United States*, 450 U.S. 544 (1981) (<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=450&invol=544>) and *Strate v. A-1 Contractors* (<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=95-1872>), 5520 U.S. 438 (1997). resulted in a test to determine whether a tribal court has jurisdiction over non-members in civil matters. The Montana test requires the tribal court to find that: 1) the parties entered into a consensual relationship with the tribe or its members through commercial dealing, contracts, leases or "other arrangements" or 2) the conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. If neither of the two factors listed in the Montana test are present, the tribal courts may not exercise civil jurisdiction over non-members on non-Indian lands.

An example of language related to the Montana Test (<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=450&invol=544>) is taken from the Tulalip Tribal Code.

Tulalip Tribal Code (<http://www.codepublishing.com/wa/Tulalip/>)

4.25.020 Legislative findings.

It is the intent of the Tulalip Board of Directors and the Tribal community that the official response to domestic violence and family violence shall be that the Tribes will not tolerate or excuse violent behavior under any circumstances. All people, whether they are elders, male, female, or children of our Tribes, or of the entire community residing on the Tulalip Reservation, are to be cherished and treated with respect. Domestic violence and family violence are not acceptable and are contrary to traditional Tulalip Tribal culture and values of honoring the family, and are contrary to the interest of our community and sense of well-being and growth. Domestic violence and family violence will not be tolerated.

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

The Tribes further recognizes that there is a distinction between intimate partner domestic violence and family member violence. Domestic violence involves an intimate partner relationship and dynamics of power and control are overwhelmingly present in the action. Family violence is committed against all other family or household members. Both are reprehensible actions that require specialized recognition and enhanced provisions than what might be otherwise available to victims of crimes, or remedies available in civil actions. [Res. 2013-379].

2. Jurisdiction Over the Parties

Jurisdiction over the parties may require at least one party to have sufficient contacts with the tribal community so that an exercise of jurisdiction over the matter does not seem unfair. Tribal courts can generally exercise personal jurisdiction over any party that maintains sufficient “minimum contacts” with the reservation sufficient to comply with the due process clause of the Indian Civil Rights.] [See www.tribal-institute.org/lists/icra1968.htm (<http://www.tribal-institute.org/lists/icra1968.htm>)]

3. Notice to the Defendant and an Opportunity to be Heard

Tribal laws will vary regarding how notice must be provided to the defendant and the timeframe in which the defendant may respond to the allegations in the protection order. See 18 U.S.C. 2265(b). See also [Enforcing Protection Orders/Full Faith and Credit](#)

Tips for Drafting Protection Orders

The protection order language should indicate that court has subject matter jurisdiction, jurisdiction over the parties and that the court has provided the Defendant with notice and an opportunity to be heard by the court in order to engage the full faith and credit provisions of VAWA. It can be helpful for tribal court orders to reference any relevant federal and tribal laws relied upon by the court. For example, a tribal court order may reference the court's power to enforce domestic violence protection orders under 18 U.S.C. § 2265 (e) (<http://www.law.cornell.edu/uscode/text/18/2265>) of VAWA 2013 in addition to referencing relevant tribal code provisions. Referencing applicable federal laws may help bolster a tribal court's determination of jurisdiction if the matter undergoes federal appellate review

For example, the protection may include language such as:

1. The court has subject matter jurisdiction under Tribal code [*cite specific applicable tribal code provisions*] and 25 USC 2265(e) based upon the following facts:
_____;
2. The court has jurisdiction over the parties according to _____ of the tribal code and based upon the following facts:
3. The Defendant has been served in accordance with _____ of the tribal code (or will be served according to _____ of the tribal code) and the court notes proof of service in the court file;
4. According to _____ of the tribal code, the Defendant has/will be provided with an opportunity to be heard on this matter. A hearing is scheduled for _____. (or the Defendant was present at the regularly scheduled hearing on _____ date, _____ or, the Defendant was not present despite being duly served with notice according to _____ of the tribal code as evidenced by the proof of service document in the court file.

The most prudent approach is for tribal courts to make specific findings in every civil protection order case as to:

1. whether the Due Process requirements of the Indian Civil Rights Act regarding notice and opportunity to be heard have been complied with;
2. whether the defendant is a citizen/member of the tribe, a non-Indian, or a citizen/member of another tribe;
3. whether the incident giving rise to the civil litigation occurred on tribal land, on fee land, or on non-tribal rights-of-way; and
4. whether the parties had entered into a consensual relationship with the tribe or its members through commercial dealing, leases, or "other arrangements," or whether the conduct in question threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

It can be helpful for tribal court orders to reference any relevant federal and tribal laws relied upon by the court. For example, a tribal court order may reference the court's power to enforce domestic violence protection orders under 18 U.S.C. § 2265 (e) (<http://www.law.cornell.edu/uscode/text/18/2265>) of VAWA 2013 in addition to referencing relevant tribal code provisions.

Referencing applicable federal laws may help bolster a tribal court's determination of jurisdiction if the matter undergoes federal appellate review.

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(<http://tribalprotectionorder.org>)

Tips for Drafting Tribal Protection Orders

The language in a protection order is very important. The language of the protection order is crucial for enforcement purposes. Clear and precise language is necessary since a violation of the protection order issued in favor of an Indian victim may be the basis for the criminal prosecution of Indian batterer or non-Indian batterer pursuant to section 904 of VAWA 2013. [See Enforcing Protection Orders/ Special Domestic Violence Criminal Jurisdiction (<http://tribalprotectionorder.org/special-dv-criminal-jurisdiction/>)] Additionally, the language in the protection order may trigger the federal firearms statutory prohibition against possessing ammunition or firearms during the period of a valid protection order. [See Drafting Protection Orders/ Federal Firearms (<http://tribalprotectionorder.org/federal-firearms-prohibition/>)] Additionally, the language in the protection order may engage section VAWA 2013 requiring that the protection order be given full faith and credit in all jurisdictions as the victim travels between jurisdictions.][See Drafting Protection Orders/Federal Full Faith and Credit (<http://tribalprotectionorder.org/federal-law/>)]

The language used in a protection order should clearly and concisely set forth the parameters of a batter's behaviors that will amount to a violation of the order. Remember that the violation of a protection order may be the basis for a criminal action, which the tribal prosecutor must prove the violation beyond a reasonable doubt.

Some areas to consider when drafting a protection order:

Victim Safety Issues:

- No violent acts
- No sexual assault
- No contact with the victim by any means- to include direct contact, contact through third parties
- No communication of any type directly or indirectly to include electronic contact or social media
- No threats
- List specific geographical limitations- locations and distance
- No stalking or tracking
- No harassment
- No engaging in any type of conduct that would place a person in reasonable fear of bodily injury

Other Remedies:

- Custody visitation, support
- Pet safety
- Rent, mortgage payment, utilities, car payment, insurance, day care, etc.
- Other relief available by statute

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Special Domestic Violence Criminal Jurisdiction

Section 904 and 908 of the Violence Against Women Reauthorization Act of 2013

VAWA 2013 was signed into law by President Obama on March 7, 2013. Title IX of the VAWA 2013 is entitled “Safety for Indian Women” and Section 904 (<http://www.tribal-institute.org/download/Drug%20Court/Title%20IX%20-%20Sec.%20904.pdf>) specifically addresses the tribal exercise of Special Domestic Violence Criminal Jurisdiction over non-Indians to address the jurisdictional gap created by *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) (<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=435&invol=191>). VAWA 2013 amended the Indian Civil Rights Act.

The purpose of Section 904 (<http://www.tribal-institute.org/download/Drug%20Court/Title%20IX%20-%20Sec.%20904.pdf>) is to decrease the incidence of crimes of domestic violence in Indian Country, to strengthen tribal sovereignty and to ensure that perpetrators of domestic violence are held accountable in tribal courts for their crimes of domestic violence, violations of protection orders and dating violence that have occurred in Indian Country. Note that the terms domestic violence, protection order and dating violence are defined in VAWA 2013. Tribal codes may need to be amended to reflect the federal definitions and note that the actions must violate tribal criminal law.

Section 904 (<http://www.tribal-institute.org/download/Drug%20Court/Title%20IX%20-%20Sec.%20904.pdf>) applies only to cases involving Indian victims and requires the tribe to meet certain benchmarks before exercising Special Domestic Violence Criminal Jurisdiction. Section 904 sets forth that the defendant must have sufficient ties to the community, which could be either

1. residence on the reservation,
2. employment on the reservation, or
3. a relationship with a tribal member or Indian resident.

Further benchmarks for the tribe to meet in order to exercise Special Domestic Violence Criminal Jurisdiction include:

1. the defendant must be provided with effective assistance of counsel equal to at least that guaranteed by the U.S. Constitution;
2. tribal governments must provide, at their expense, indigent defendants a defense attorney licensed to practice by any jurisdiction in the United States;

3. defense attorney must be licensed by a jurisdiction that applies appropriate licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;
4. Judges presiding over criminal proceedings subject to enhanced sentencing/non-Indian defendants must have sufficient legal training to preside over criminal trials;
5. Judges presiding over criminal proceedings subject to enhanced sentencing/non-Indian defendants have sufficient legal training to preside over criminal trials;
6. the tribe's criminal law, rules of evidence, and rules of criminal procedure are made available to the public prior to charging the defendant;
7. Tribal court must maintain a record of the criminal proceeding, including an audio or other recording;
8. Tribal court must provide the defendant the right to a trial by an impartial jury;
9. Tribal court ensures that the jury pool reflects a fair cross section of the community;
10. Tribal court ensures that juries are drawn from sources that do not systematically exclude any distinctive group in the community, including non-Indians;
11. Tribal court ensures that anyone detained under the special domestic violence criminal jurisdiction is "timely notified" of his/her rights and responsibilities;
12. Tribal court ensures that a defendant is notified of their right to file "a petition for a writ of habeas corpus in a court of the United States.";
13. Tribal court ensures that "all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise special domestic violence criminal jurisdiction over the defendant" are provided; and
14. Tribal court ensures that "all applicable rights under the special domestic violence criminal jurisdiction provisions" are provided.

However, Section 908 (<http://www.tribal-institute.org/download/Drug%20Court/Title%20IX%20-%20Sec.%20908.pdf>) of VAWA 2013 allowed tribes to opt in to a pilot program to exercise Special Domestic Violence Criminal Jurisdiction prior to March 7, 2015. Currently there are three tribes in the United States exercising Special Domestic Violence Criminal Jurisdiction: Tulalip Tribe, Confederated Band of Umatilla Indians, Pascua Yaqui Tribe.

With the enactment of Section 904 (<http://www.tribal-institute.org/download/Drug%20Court/Title%20IX%20-%20Sec.%20904.pdf>) of VAWA 2013, the drafting of protection order that will form the basis of a criminal action for violations have become even more critical. Careful and specific drafting of protection order language that specifically sets out the terms of the protection order so a violation can be adequately determined is crucial.

Tribal Law and Order Act (TLOA) and Protection Orders

The Tribal Law and Order Act

(<http://www.justice.gov/usao/az/IndianCountry/Tribal%20Law%20%20Order%2>

may also be useful in domestic violence cases in tribal courts. The Tribal Law and Order Act is an example of another federal law that relaxed federal restrictions placed on tribal sovereignty. The Tribal Law and Order Act (<http://www.justice.gov/usao/az/IndianCountry/Tribal%20Law%20%20Order%20>) relaxed the tribal court’s sentencing authority set out in the Indian Civil Rights Act. Tribal Courts that can meet certain benchmarks set forth below now have option of the following sentencing authority: Up to 3 years of imprisonment for any one offense and a \$15,000 fine or both, with no more than a total of 9 years imprisonment.

Limitations on Utilizing TLOA Enhanced Sentencing and/or VAWA Criminal Jurisdiction Limitations TLOA

Limitations	TLOA	VAWA
<p>Particular Offenses Only: Defendant must either (1) previously have been convicted of same or comparable offense by any jurisdiction in U.S.; or (2) is being prosecuted for a “felony” (an offense that would be punishable by more than 1 year imprisonment if prosecuted by U.S. or any of the States).</p>	X	
<p>Particular Offenses Only: Defendant must be prosecuted for either (1) domestic violence, (2) dating violence, or (3) violation of a protection order.</p>		X
<p>Particular Defendants Only: Defendant must have sufficient ties to the community, which could be either (1) residence on the reservation, (2) employment on the reservation, or (3) a relationship with a tribal member or Indian resident.</p>		X

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