



Developing a Domestic Violence Court/Docket

Kelly Gaines Stoner ,OVC Indian Nations Conference,
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Presentation Outline

- ▶ What is a Tribal Domestic Violence Court?
- ▶ What is a Tribal Domestic Violence Docket?
- ▶ How to develop and implement a Tribal Domestic Violence Court/Docket.
- ▶ Why is a Tribal Domestic Violence Court/Docket a good choice for my community?





A SPECIALIZED COURT

DOMESTIC VIOLENCE COURTS

STRENGTHENS TRIBAL SOVEREIGN POWERS

- ▶ May be civil and/or criminal
- ▶ Allows for incorporation of unique tribal customs/traditions regarding healthy families and communities in all phases of a case
- ▶ Allows specialized domestic violence tribal court to implement policies, protocols and trainings for personnel that will come into contact with the family
- ▶ Builds strong partner relationships among service partners

DOMESTIC VIOLENCE COURTS

PUTS FOCUS ON VICTIM SAFETY BY:

- ▶ Protocols to keep victims informed
- ▶ Protocols to link victim with advocate for safety planning
- ▶ May empower tribal victim service providers

PUTS FOCUS ON COURT SAFETY:

- ▶ Protocols to create safe places within and outside the courthouse
- ▶ Providing specially trained court/law enforcement personnel
- ▶ Safety-driven scheduling of dockets

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Domestic Violence Courts

HOLDING BATTERERS ACCOUNTABLE

- ▶ Specially trained court/law enforcement personnel
- ▶ Builds strong relationships with multiple service providers
- ▶ May allow cross-pollination of batterer records to promote more comprehensive monitoring
- ▶ Allows specialized court to determine culturally appropriate batterer programs
- ▶ Focus post-adjudication is on batterer accountability and change
- ▶ Built in review hearings

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DOMESTIC VIOLENCE COURTS

PROMOTING COORDINATED TRIBAL COMMUNITY RESPONSE TO DOMESTIC VIOLENCE

- ▶ May create policy uniformity among various agencies working with the victim
- ▶ May provide opportunity for regular meetings among service providers
- ▶ Creates environment in which system change can be achieved



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POSSIBLE BARRIERS

- ▶ Funding for tribal constitution and tribal code review and revisions where needed
- ▶ Various policies and procedure reviews (regarding non-Indian jury pool)
- ▶ Funding for specialized judges, court personnel and law enforcement
- ▶ Funding for court administration
- ▶ Funding for incarceration, probation and possible health care of non-Indian batterers
- ▶ May need technical assistance and training support to reach and maintain goals

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A SPECIALIZED DOCKET

DOMESTIC VIOLENCE DOCKETS

- ▶ May be civil and/or criminal
- ▶ Provides some measure of continuity for victims and families
- ▶ Specialized docket days that focus on victim safety and batterer accountability
- ▶ May provide specialized judges and court personnel
- ▶ May provide specialized law enforcement
- ▶ May enhance relationships with service providers

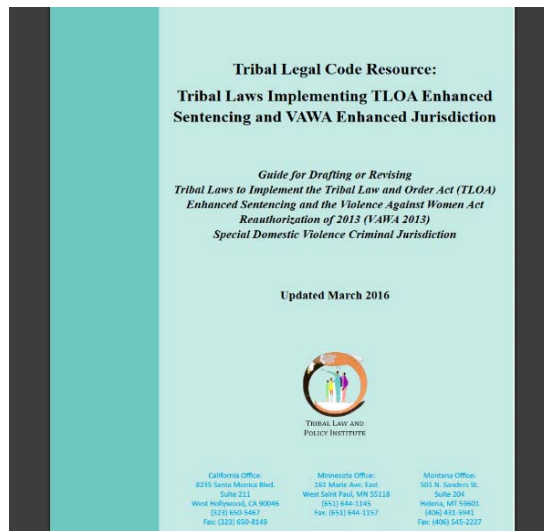
POSSIBLE BARRIERS

- ▶ May not provide the continuity of a Domestic Violence Court regarding victim safety and batterer accountability
- ▶ May not provide platform for exercising SDVCJ
- ▶ May require funding for tribal constitution and/or code revisions
- ▶ May require funding for additional judges
- ▶ May require ongoing training on dynamics of domestic violence and victim safety issues

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HOW TO IMPLEMENT

Tribal Legal Code Resource (www.tlpi.org)



WHY SHOULD MY COMMUNITY
IMPLEMENT?

Title IX of the 2013 VAWA

- ▶ Section 904: Tribal Jurisdiction over Crimes of Domestic Violence
 - ▶ “Special Domestic Violence Criminal Jurisdiction” which recognizes a tribe’s inherent criminal jurisdiction over **non-Indians** for the crimes of
 - ▶ Domestic Violence
 - ▶ Dating Violence
 - ▶ Violation of Protection Order

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Tribes can now exercise Special Domestic Violence Criminal Jurisdiction

- ▶ Under VAWA Reauthorization Act of 2013, tribes now have the **OPTION** to exercise Special Domestic Violence Criminal Jurisdiction (SDVCJ).
- ▶ Currently the following tribes are exercising SDVCJ:
 - ▶ Confederated Tribes of the Umatilla Indian Reservation
 - ▶ Pascua Yaqui Tribe
 - ▶ Tulalip Tribes
 - ▶ Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation
 - ▶ Sisseton Wahpeton Oyate of the Lake Traverse Reservation
 - ▶ Little Traverse Bay Bands of Odawa Indians
 - ▶ Eastern Band of Cherokee
 - ▶ Seminole Nation of Oklahoma

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VAWA SDVCJ BUILDS ON THE TRIBAL LAW AND ORDER ACT (TLOA)

- ▶ TLOA: P.L. 111-211 (2010)
- ▶ Modifies the Indian Civil Rights Act (ICRA) to provide tribal enhanced sentencing authority for tribes that can meet TLOA benchmarks.



Due Process Protections Required by TLOA and/or VAWA

	TLOA and VAWA Due Process Requirements	TLOA	VAWA
1.	Defendants are provided with effective assistance of counsel equal to at least that guaranteed in the U.S. Constitution.*	✓	✓
2.	Tribal government provides, at their expense, to an indigent defendant a defense attorney licensed to practice by any jurisdiction in the United States.*	✓	✓
3.	Defense attorney is 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 have sufficient legal training to preside over criminal trials.*	✓	✓
5.	Any judge presiding over criminal proceedings subject to enhanced sentencing/non-Indian defendants are licensed to practice law by any jurisdiction in the United States.*	✓	✓

*Note: These due process protections are required under TLOA. But, they are only required under

- ▶ VAWA if a term of imprisonment of any length may be imposed.

TLOA and VAWA Due Process Requirements		TLOA	VAWA
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 maintains a record of the criminal proceeding, including an audio or other recording.*	✓	✓
8.	Any defendant sentenced to greater than 1-year imprisonment to be served in a tribal facility, that facility must pass the BIA jail standards for long-term incarceration.	✓	
9.	Tribal court provides the defendant the right to a trial by an impartial jury.		✓
10.	Tribal court ensures that the jury pool reflects a fair cross section of the community.		✓
11.	Tribal court ensures that juries are drawn from sources that do not systematically exclude any distinctive group in the community, including non-Indians.		✓

*Note: These due process protections are required under TLOA. But, they are only required under VAWA if a term of imprisonment of any length may be imposed.

TLOA and VAWA Due Process Requirements		TLOA	VAWA
12.	Tribal court ensures that anyone detained under the special domestic violence criminal jurisdiction is "timely notified" of his/her rights and responsibilities.		✓
13.	Tribal court ensures that a defendant is notified of their right to file "a petition for a writ of <i>habeas corpus</i> in a court of the United States."		✓
14.	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.		✓
15.	Tribal court ensures that "all applicable rights under the special domestic violence criminal jurisdiction provisions" are provided.		✓

Tribal Domestic Violence Special Jurisdiction Model Code

- ▶ Setting up a DV Court, a tribe could get around the issue of the jury composition and ensuring that the non-Indian participants in a pool are limited to this type of case.
- ▶ Purpose/Creation of Court
- ▶ Definition of SDVCJ
- ▶ Rights included
- ▶ Jurisdiction
- ▶ Statute of limitations
- ▶ Nonwaiver of sovereign immunity
- ▶ Severability
- ▶ Savings



Intertribal Technical-Assistance Working Group (ITWG)

The DOJ launched the ITWG as a key part of the Pilot Project.

The ITWG is a voluntary working group of tribal representatives who exchange views, information, and advice about how tribes may best exercise special domestic violence criminal jurisdiction (SDVCJ) and combat domestic violence.



Tribes represented on the ITWG

- | | |
|---|--|
| 1. Cherokee Nation | 24. Pueblo of Laguna |
| 2. Chickasaw Nation | 25. Pueblo of Santa Clara |
| 3. Colorado River Indian Tribes | 26. Quapaw Tribe |
| 4. Confederated Tribes of the Umatilla Indian Reservation | 27. Quinault Indian Nation |
| 5. Eastern Band of Cherokee Indians | 28. Sac and Fox Nation |
| 6. Eastern Shawnee Tribe of Oklahoma | 29. Salt River Pima-Maricopa Indian Community |
| 7. Gila River Indian Community | 30. Sault Ste. Marie Tribe of Chippewa Indians |
| 8. Fort Peck Assiniboine & Sioux Tribes | 31. Seminole Nation of Oklahoma |
| 9. Hopi Tribe of Arizona | 32. Sisseton-Wahpeton Oyate of the Lake Traverse Reservation |
| 10. Kickapoo Tribe of Oklahoma | 33. Spokane Tribe |
| 11. Menominee Tribe of Wisconsin | 34. Standing Rock Sioux Tribe of North and South Dakota |
| 12. Mississippi Band of Choctaw Indians | 35. Suquamish Indian Tribe of the Port Madison Reservation |
| 13. Muscogee (Creek) Nation | 36. Three Affiliated Tribes of the Fort Berthold Reservation |
| 14. Nez Perce Tribe | 37. Tulalip Tribes of Washington |
| 15. Nottawaseppi Huron Band of the Potawatomi | 38. White Earth Nation |
| 16. Oneida Tribe of Indians of Wisconsin | 39. Winnebago Tribe of Nebraska |
| 17. Pascua Yaqui Tribe of Arizona | 40. Apache Tribe of Oklahoma |
| 18. Passamaquoddy Tribe | 41. Bois Forte Band of Chippewa |
| 19. Pauma Band of Mission Indians | 42. Cheyenne River Sioux Tribe |
| 20. Penobscot Nation | 43. Little Traverse Bay Band of Odawa |
| 21. Pokagon Band of Potawatomi Indians | 44. Shoshone Bannock Tribes |
| 22. Prairie Band Potawatomi Nation | 45. Swinomish Indian Tribal Community |
| 23. Pueblo of Isleta | |

(Intertribal Technical-Assistance Working Group (ITWG))

Multiple in-person meetings

Webinar series on jury selection, defendant's rights, indigent defense, domestic violence best practices, tribal protection orders



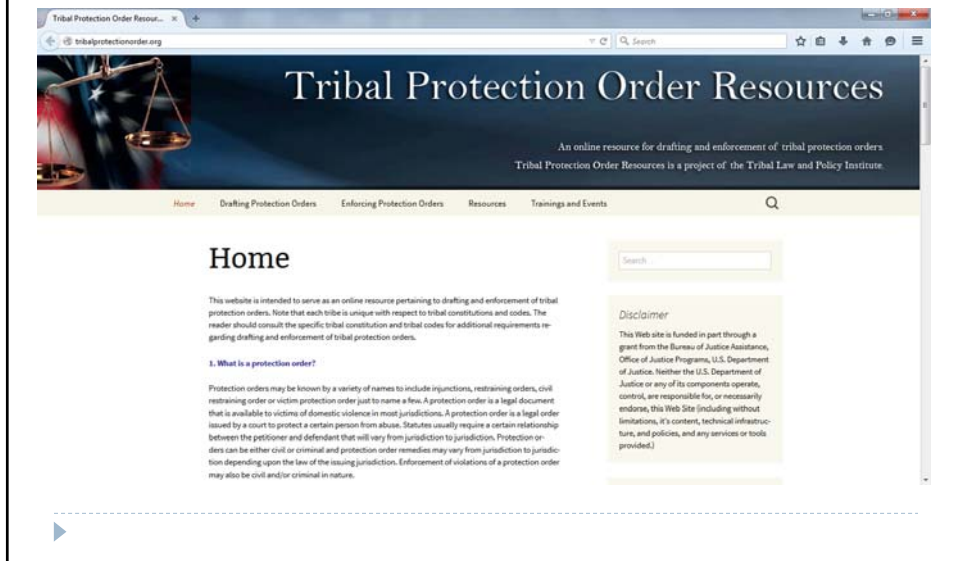
Interested in joining the ITWG or looking for resources?

Email: tribal-vawa@NCAI.org



RESOURCES

www.tribalprotectionorder.org



www.ncai.org/tribal-vaawa



Domestic Violence Court and Domestic Violence Docket RESOURCES

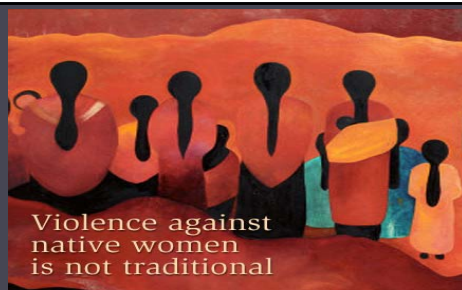
- ▶ Tribal Code Development, tribal domestic violence case law resource, tribal protection orders, and other articles found at <http://www.tribal-institute.org/lists/domestic.htm>
- ▶ Article on Protecting Sovereignty : The Role of Tribal Courts at http://law.und.edu/tji/_files/docs/protecting-sovereignty-tribal-courts-2013.pdf
- ▶ Articles on protocols on prosecuting sexual assaults in Indian Country at www.swclap.org
- ▶ Tribal Code Checklist for Implementing Special Domestic Violence Criminal Jurisdiction at <http://www.ncai.org/tribal-vawa/getting-started/tribal-code-development-checklist-for-implementation-aug-20142.pdf>
- ▶ Domestic Violence Courts Key Principles (non-tribal specific) at <http://www.courtinnovation.org/research/key-principles-domestic-violence-court-accountability>
- ▶ History of Domestic Violence Courts (non-tribal specific) at <http://www.courtinnovation.org/topic/domestic-violence>
- ▶ Tulalip's DV Court at <http://www.tulaliptribes-nsn.gov/Home/Government/Departments/TribalCourt/DomesticViolence.aspx>

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Domestic Violence Court and Domestic Violence Docket RESOURCES

- ▶ To view the 5 SDVCJ pilot project tribes applications to DOJ: <http://www.ncai.org/tribal-vawa/pilot-project-itwg/application-questionnaire>
- ▶ Confederated Tribes of the Umatilla Indian Reservation Code and VAWA directive: <http://ctuir.org/court-code>
<http://ctuir.org/criminal-court-directive-vawa>
- ▶ Pascua Yaqui Tribe code: http://www.pascuayaqui-nsn.gov/_static_pages/tribalcodes/index.php
- ▶ Tulalip Tribes DV Court: <http://www.tulaliptribes-nsn.gov/Home/Government/Departments/TribalCourt/DomesticViolence.aspx>
- ▶ Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation: <http://www.fptc.org/ccoj/ccoj.html>
- ▶ Sisseton Wahpeton Oyate of the Lake Traverse Reservation: <http://www.swo-nsn.gov/departments/justice-department/legal-department/>

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Violence against
native women
is not traditional

QUESTIONS?

For more information:

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