

Tribal VAWA - Code Revision and/or Drafting

MAY 19, 2015



Presenters

- John Dossett, General Counsel, National Congress of American Indians
- Kelly Gaines Stoner, Victim Advocacy Legal Specialist, Tribal Law & Policy Institute
- Megan LaFromboise, Junior Attorney for the Legal Department , Sisseton-Wahpeton Oyate

Moderators:

- Virginia Davis, Senior Policy Advisor, National Congress of American Indians
- Chia Halpern Beetso, Tribal Court Specialist, Tribal Law & Policy Institute

Outline of Presentation

- Overview of the Intertribal Technical-Assistance Working Group (ITWG)
- Tribal Code Checklist
- Comparison of Five Pilot Project Tribes' Codes
- Sisseton-Wahpeton Oyate
- Tribal Legal Resource
- Model Code developed by Three Pilot Tribes
- Questions

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

<ol style="list-style-type: none"> 1. Cherokee Nation 2. Chickasaw Nation 3. Colorado River Indian Tribes 4. Confederated Tribes of the Umatilla Indian Reservation 5. Eastern Band of Cherokee Indians 6. Eastern Shawnee Tribe of Oklahoma 7. Gila River Indian Community 8. Fort Peck Assiniboine & Sioux Tribes 9. Hopi Tribe of Arizona 10. Kickapoo Tribe of Oklahoma 11. Menominee Tribe of Wisconsin 12. Mississippi Band of Choctaw Indians 13. Muscogee (Creek) Nation 14. Nez Perce Tribe 15. Nottawaseppi Huron Band of Potawatomi 16. Oneida Tribe of Indians of Wisconsin 17. Pascua Yaqui Tribe of Arizona 18. Passamaquoddy Tribe 19. Pauma Band of Mission Indians 20. Penobscot Nation 	<ol style="list-style-type: none"> 21. Pokagon Band of Potawatomi Indians 22. Prairie Band Potawatomi Nation 23. Pueblo of Isleta 24. Pueblo of Laguna 25. Pueblo of Santa Clara 26. Quapaw Tribe 27. Quinault Indian Nation 28. Sac and Fox Nation 29. Salt River Pima-Maricopa Indian Community 30. Sault Ste. Marie Tribe of Chippewa Indians 31. Seminole Nation of Oklahoma 32. Sisseton-Wahpeton Oyate 33. Spokane Tribe 34. Standing Rock Sioux Tribe 35. Suquamish Indian Tribe 36. Three Affiliated Tribes 37. Tulalip Tribes of Washington 38. White Earth Nation 39. Winnebago Tribe of Nebraska
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Multiple in-person meetings

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



ITWG

Inter Tribal Working Group Issue List

- Tribal Code Development
- Jury Selection and Judicial Requirements
- Criminal Defense and Defendant's Rights
- Law Enforcement Arrest Authority Guidance
- Law Enforcement Training
- Detention Policies at Interior
- Habeas Corpus and Legal Challenges
- Coordination with U.S. Attorneys
- Victims' Rights and Victims' Safety
- Access to Criminal Databases
- Resources

Interested in joining the ITWG or looking for resources?

Email: tribal-vawa@NCAI.org

Thank you!

Tribal Code Checklist - Mandatory

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- 1) Tribal Constitution
- 2) Definitions and Offenses: Domestic Violence, Dating Violence, Violation of Protection Order
- 3) Rights of Defendants
 - 1) Indian Civil Rights Act
 - 2) Jury Pool to Include Non-Indians
 - 3) Notice of Right to Habeas
 - 4) Right to Counsel
 - 5) Qualifications of Judges
 - 6) Recording of Proceedings
 - 7) Publication of Laws

Code Checklist – Additional Items to Consider

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- 1) Victim's Rights and Safety
- 2) Mandatory Arrest and Protection Orders
- 3) DV Offender Gun Bans
- 4) Notice and Community Engagement
- 5) Police Guidance on Non-Indian Detention
- 6) Jury Selection Plan
- 7) Separate DV Court or Docket
- 8) Extended Sentencing Authority
- 9) Tribal Habeas
- 10) Tribal Court Code or Rules

Comparing the Five Pilot Tribal Codes

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- **Jury Pools**
 - Umatilla, Pascua Yaqui, Tulalip – same jury pool for all crimes
 - Ft. Peck & Sisseton – non-Indians included only in SDVCJ
- **Right to Counsel**
 - Umatilla, Pascua Yaqui, Tulalip – indigent counsel for all
 - Ft. Peck – counsel guaranteed for SDVCJ and domestic abuse
 - Sisseton – indigent counsel for all “if available” but guaranteed for SDVCJ
- **Judicial**
 - All five of the pilot tribes have at least one state-barred judge. However, the long-time chief judge of the Fort Peck Tribal Court is not state-barred. Instead, this judge has an undergraduate degree, is licensed in tribal court, and has two certificates from judicial college for “Tribal Judicial Skills” and “Special Court Trial Skills.”

Comparing the Five Tribal Pilot Codes

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- **Victim’s Rights/Protection**
 - All five tribes have substantial protections for victims
 - Fort Peck and Tulalip have DV Court or Docket to focus solely on DV cases – advantage in providing services
 - Umatilla has automatic protection orders
 - Tulalip and Umatilla have DV arrest requirement
 - Umatilla has a Family Violence Program that provides community-based advocacy to domestic violence victims.
 - Fort Peck also has a Family Violence Resource Center that provides comprehensive services to domestic violence and sexual assault victims.
- **Notice – all five tribes provided public notice**

Questions?



Sisseton-Wahpeton Oyate



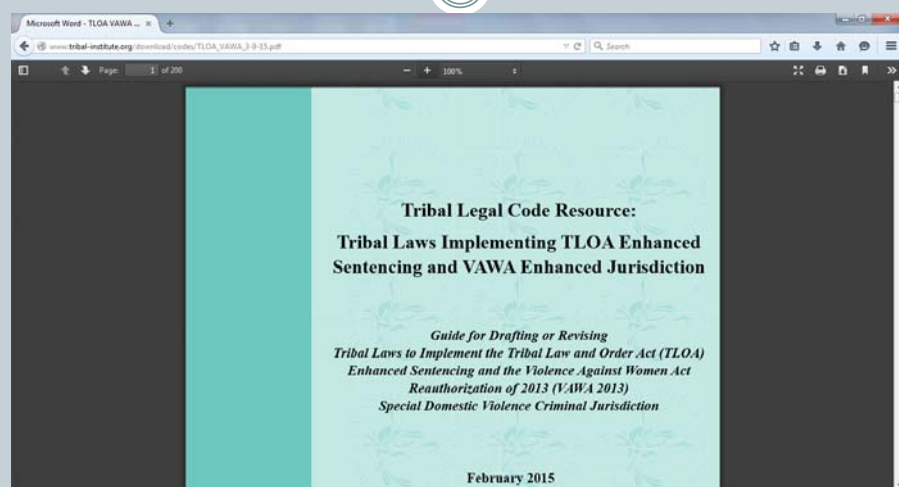
- Process for drafting code.
- Successes while during the drafting process.
- Challenges.
- Advice for tribes considering implementing SDVCJ.
- Current status (no prosecutions yet?)



Questions?



Tribal Legal Code Resource (www.tlpi.org)



Part I

- Chapter 1. Introduction
- Chapter 2. How to Use this Resource as a Guide
- Chapter 3. A Brief History of TLOA and VAWA 2013
- Chapter 4. Does Your Tribe Want to Exercise Enhanced Powers?
- Chapter 5. Drafting Required Codes and Regulations

Part II

Examines the codes, laws and rules.

- Codes, Laws, and Rules
- Chapter 6. Types of Offenses and Defendants
- Chapter 7. Publication of Laws and Rules

Part III

- Chapter 8. Defense Counsel
- Chapter 9. Judges
- Chapter 10. Establishing a Tribal Bar Association

Part IV

- Chapter 11. Court of Record
- Chapter 12. Jury Trials
- Chapter 13. Sentencing Options
- Chapter 14. Stay of Detention Pending Habeas Review

Part V

Helpful Resources:

- Indian Civil Rights Act, as amended by TLOA and VAWA 2013
- Model Tribal Code Tulalip Tribal Court Rules
- Tulalip Domestic Violence Court Rules,
- Tulalip Request for Application of Indigent Criminal Conflict Attorney Tulalip Indigent Conflict Attorney Contract

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

Questions?

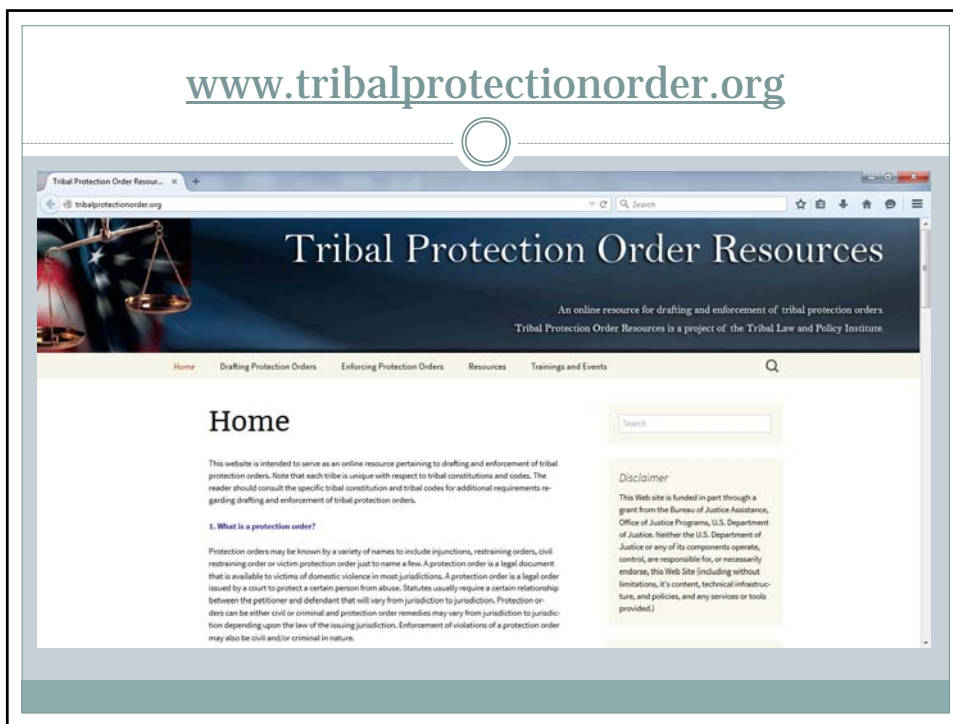


Resources



- Tribal Code Checklist
- Tribal Legal Resource-<http://www.tribal-institute.org/codes/TOLA-VAWA-Guide.html>
- SDVCJ Model Code
- www.tribalprotectionorder.org
- www.ncai.org/tribal-vawa
- Join the ITWG, email: tribal-vawa@NCAI.org

www.tribalprotectionorder.org



www.ncai.org/tribal-vawa



