

Family Violence in Tribal Communities: Curriculum Outline

- General information on tribal communities and tribal population in California;
- Scope and nature of problem of family violence in native communities;
- Barriers to achieving protection for victims and offender accountability;
 - Cultural and historical factors;
 - Geographic factors
 - Jurisdictional issues
 - Jurisdiction in Indian country;
 - Public law 280
 - Full faith and credit for tribal protective orders
- Strategies to improve victim protection and offender accountability

Family Violence in Indian Country:
Ensuring victim protection and offender accountability

The intended audience for this curriculum is California's state court judicial officers and attorneys.

Competencies

C.1: The participant develops an understanding of the magnitude and scope of the issues of family violence in Indian Country in California.

C.2: The participant develops an understanding of the barriers to victim protection and offender accountability in family violence cases in California Indian Country.

C.3: The participant develops an understanding of the jurisdictional landscape existing in California Indian country.

C.4: The participant develops an understanding of the how these issues may affect the ability of Native Americans to achieve adequate access to justice in various case types.

Learning Objectives:

Knowledge

K.1: The participant understands the rules related to tribal, federal and state regulatory and adjudicatory jurisdiction in Indian country

K.2: The participant understands the effect of Public Law 280 on jurisdiction in California Indian Country specifically as related to family violence cases.

K.3: The participant understands the role of and how tribal justice systems in ensuring victim protection and offender accountability in family violence cases.

K.6: The participant understands the need for cooperation between tribal, state and federal authorities to ensure access to justice for Native Americans in California.

K.7: The participant understands the implications of this jurisdictional scheme on family violence cases involving Native Americans and / or occurring on reservations

K.7: The participant will know what resources exist to further study and understand jurisdictional issues in Indian country.

Skill

S.1: When given a case scenario the participant will be able to identify possible jurisdictional issues.

Final Competencies and Learning Objectives

Family Violence in Indian Country:
Ensuring victim protection and offender accountability

S.2: When given a case scenario the participant will be able to identify the roles and responsibilities of tribal, state and federal justice agencies in ensuring access to justice.

S.3: The participant will demonstrate an ability to make appropriate and thorough findings regarding jurisdictional issues.

Value

V.1: The participant will appreciate the unique history and culture of Native American communities and how these impact family violence in tribal communities in California.

V.2: The participant will understand and value the differences between native and non-native justice systems.

V.3: The participant will understand and value the need for collaboration between state and tribal justice partners.

V.4: The participant will value and understand and value the unique needs of Native American victims of family violence and how the steps the court must take to ensure adequate protection.

Family Violence in Indian Country

Ensuring Victim Protection &
Offender Accountability

Family Violence In Native Communities

- Native women experience the highest rate of violence of any group in the United States
- More than 1 in 3 American Indian/Alaska Native women will be raped during their lifetime
- 2.5 times more likely than non-Native women
- Sexual violence is one of the most under reported crimes
- The majority of these crimes are committed by non-Natives



What we think we know about violence in Indian Country:

- A publication of the National Sexual Violence Resource Center (NSVRC) states,
 - *"Sexual assault in Indian Country must be understood within the context and prevalence of violence and in conjunction with the effects of historical oppression and complicated jurisdictional issues. Together these factors have negatively impacted sexual assault victims."*
 - Sexual Assault in Indian Country: Confronting Sexual Violence (2000)



California Indians

- 2010 Census reported almost 600,000 in California who self-identify as having American Indian / Alaska Native heritage.
- Currently 106 federally recognized tribes* second only to Alaska
- Approximately 550,000 acres of tribal trust lands and another 63,000 acres of Individual trust allotments.



Native Americans and Tribes in California

- California is home to 15% of all Native Americans living in the U.S.
- More than in any other state
- 107 federally recognized tribes (about 20% of all tribes in the U.S.)
- 74 tribes in California petitioning for federal recognition (as of 9/08)
- Today, 19 tribal courts serving 40 Tribes in California



California Indian Trust Land Map



- Indian land currently held in Trust by the United States Government.
- Historical location of Indian land which was once held in Trust for a Terminated Tribe and/or the location of a landless Federally Recognized Tribe.
- Indian Land currently held in Trust by the United States Government but resides in the Nevada or Arizona Jurisdiction.
- Indian land currently held in Trust by the United States Government and known as a Public Domain Allotment.
- 10 Hydrologic Region Boundaries
- Delta
- Mountain counties
- Ground water basins

This map constitutes a representation of the general distribution and location of Indian Land in the State. It does not address questions of boundary or area which an accurate survey may disclose. It is to be used on an "as-is" basis as no liability for damages arising from errors or omissions is assumed.



Barriers to Protection & Accountability

- Historical & cultural
- Geography
- Jurisdiction



Historical & cultural Barriers

- Native Americans report that law enforcement, courts and services
 - lack of knowledge about historical experiences of Indian communities
 - Lack of cultural awareness and understanding



Geographic barriers

- Many native communities are remote from courts, services & law enforcement;
- May not be well served by public transport;
- Individuals may not have transportation

Jurisdictional barriers

- Jurisdictional limits of tribal courts and law enforcement;
 - No criminal jurisdiction over non-Indians;
 - Very limited right to impose criminal sanctions



Jurisdictional Barriers

- In 1978, the U.S. Supreme Court ruled that tribal courts have no “inherent criminal jurisdiction over non-Indians”.
 - (Oliphant v. Suquamish, 435 U.S. 191 (1978))
- Tribal courts can only exercise criminal jurisdiction over criminal defendants who are Indian.
- Tribal court civil jurisdiction can be exercised over all persons provided that the tribal law and order code provides so.



Jurisdictional barriers cont.

- In California state has criminal jurisdiction in Indian country
BUT
- No “civil regulatory” jurisdiction



Native victims report issues with:

- Law enforcement
- Services &
- Courts



Law Enforcement

- Long or no response
- Police and Sherriff departments are under-resourced
- Sometimes culturally insensitive and/or prejudiced
- Fear of having children removed if domestic violence reported



Service Provision

- Some services are culturally inappropriate
- Lack of information on what services are available and how to access those services
- Funding limitations and narrowly defined funding priorities
- CPS will sometimes remove children inappropriately
- Non-native service providers are sometimes judgmental and will stereotype.



Access to State Court

- Deep distrust of state systems
- Perception that state systems are prejudiced against Native Americans
- Historical trauma is not understood by non-Native people
- Information on how to navigate the state court system is lacking



Access to State Court

- Court geographically far from the reservation
- Not enough training for court personnel on cultural and jurisdictional issues
- When cases are not prosecuted, perpetrator returns to the community
- Engaging the court can be dangerous because it forces victims to interact with perpetrator



Jurisdictional Scheme

For Indians in “Indian Country” -

- Presumption of federal and tribal jurisdiction in Indian country, unless extinguished by Congress
- Presumption against state (and local) jurisdiction in Indian country absent express congressional authority



Tribal jurisdiction

- Presumptive civil and criminal jurisdiction over Indians in Indian Country;

LIMITS

Indian Civil Rights Act – limits sanctions that can be imposed;

- No criminal jurisdiction over non-Indians;
- Limits on civil jurisdiction over non-Indians



Public Law 280 (August 15, 1953)

- Cedes most federal criminal-prohibitory and civil-adjudicatory jurisdiction to PL-280 states
- Establishes concurrent tribal and state criminal jurisdiction over Indian country
- Tribal jurisdiction is not eliminated
 - Criminal jurisdiction over Indians
 - Civil jurisdiction over non-Indians



Public Law 280

- 18 U.S.C. §1162
- 28 U.S.C. §1360



ADMINISTRATIVE OFFICE
OF THE COURTS

PL 280 Very, Very Generally

Offender

Victim

Jurisdiction

Non-Indian

Non-Indian

Exclusive State

Non-Indian

Indian

Exclusive State

Indian

Non-Indian

Concurrent

Indian

Indian

Concurrent



The PL 280 Impact

- Legal – Overlapping jurisdiction
 - Transferred from the federal government to the states jurisdiction
 - Did not eliminate tribal jurisdiction
- Fiscal – Limited funding for Tribes



Tribal Court Jurisdiction

- Pursuant to federal law, a tribal court has full civil jurisdiction to enforce protection orders, including authority to enforce any order through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe.

18 U.S.C. § 2265(e)



ADMINISTRATIVE OFFICE
OF THE COURTS

In Practice

- Few tribal courts exercising criminal jurisdiction
- Few Tribes have tribal police
- Most Native victims are dependent on state courts and local county law enforcement
- More information is needed about the state court system and how to navigate it



State Court Jurisdiction

- States have full civil and criminal authority to enforce tribal protection orders



State court Restraining Orders

- Can be difficult to obtain (cultural, geographic barriers)
- Restraining orders are not always effective
- Law enforcement will not always enforce tribal court restraining orders
- Inability to validate tribal court restraining orders



Tribal court restraining orders

- Few existing tribal courts;
- Tribal court orders may not get into CLETS;
- If law enforcement can't verify they may not enforce



Full Faith and Credit for Protection Orders

Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) *and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory* as if it were the order of the enforcing State, Indian tribe, or territory. 18 U.S.C. §2265(a).



What That Means

Full faith and credit for protection orders means that when a protection order issued by any State, Indian tribe, or territory is violated in any other jurisdiction, it must be enforced as if the order had been issued in the enforcing jurisdiction.



VAWA Definition of Protection Order

- Any injunction, *restraining order*, or any other order issued by a *civil or criminal court* for the purpose of preventing violent or threatening acts or harassment against, *sexual violence* or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a *civil or criminal court* whether obtained by filing an independent action or as a *pendente lite* order in another proceeding so long as any *civil or criminal order* was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection;
- Any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.



Full Faith and Credit Requires:

- Jurisdiction 18 U.S.C. §2265(b)(1).
 - Parties
 - Subject Matter
- Due Process 18 U.S.C. §2265(b)(2).
 - Notice
 - Opportunity to be heard



VAWA Requires that:

- Custody, visitation and support provisions in protection orders *must* receive full faith and credit. 18 U.S.C. §2265(a),(b).
- All “injunctive” court orders, so long as the purpose of the order is to provide safety and protection for survivors of violence, will be afforded Full Faith and Credit. 18 U.S.C. §§ 2266(5)(A), 2265(a).



Full Faith and Credit Prohibits Requiring that:

- Prior registration or filing as prerequisite for enforcement. 18 U.S.C. §2265(d)(2).
 - Any protection order that is otherwise consistent with Full Faith and Credit provisions shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State, tribal, or territorial jurisdiction.
- Notification to the respondent upon registration. 18 U.S.C. §2265(d)(1).
 - A State, Indian tribe, or territory according full faith and credit to an order by a court of another State, Indian tribe, or territory shall not notify or require notification of the party against whom a protection order has been issued.

Ways to Help:

- **Contact Tribes, tribal social service agencies, and tribal courts**
 - Let them know what your system provides
 - Find out what they need
- **Resources**
 - See maps for Tribes in your area (see handouts) and
 - Statewide Directory of Native Services:
<http://www.courtinfo.ca.gov/programs/cfcc/programs/description/tribalservices/>



More Ways to Help

- With tribal input, develop or adapt brochures
- Resources: tribal resources in your area, other tribal brochures, and Native domestic violence brochure templates: <http://www.red-wind.net/>
- Consider remote “e” services like DASH or fax filing to bridge geographic barriers



More Ways to Help

- Partner with tribal communities to hold informational presentations or clinic hours on tribal lands
- Resources: Alpine Superior Court and Butte Superior Court



More ways to help

- Where tribal courts & law enforcement exist, work with them to ensure mutual full faith and credit for protective orders



More Ways to Help

- Collaborate with the tribal court, if there is one in your area, and share resources
- Resources: Humboldt Superior Court, Imperial Superior Court, and Inyo Superior Court



More Ways to Help

- Establish or participate in local tribal/state court or local agency collaborative
- Invite tribal representatives to join existing collaborative
- Resources: Lake County Roundtable, LA County Community Coalition; and Riverside County Tribal Alliance for Indian Children and Families



More Ways to Help

- Establish protocols, such as:
 - reciprocal enforcement of tribal court and state court protective orders
 - formalization of service protocols, including those for referrals and services
 - development of safety protocols for Native victims of domestic violence

- Resources: Inyo Superior Court protocols, Inter Tribal Council of California:

<http://www.itccinc.org/familyviolence.asp>

Mending the Sacred Hoop's manual, Addressing Domestic Violence in Indian Country, <http://www.msh-ta.org/Resources/Addressing%20Violence%20in%20Indian%20Country.pdf>

More Ways to Help

- Collect tribal-specific data and share this data with the Tribes
- Provide letters of support, memoranda of understanding, and memoranda of agreement to Tribes and tribal programs applying for grants



Family Violence in California Indian Country

Ensuring victim protection & offender accountability

-SUGGESTED LESSON PLAN-

2.5 HOUR TRAINING

Topic	Methodology	Learning Objective
Segment 1: 10 minutes Segment 1: Welcome, Introductions and acknowledgements, review of competencies and learning objectives	<ul style="list-style-type: none"> ▪ Lecture ▪ Handout: Prioritization of Competencies and learning objectives PPT - Slide 1 	
Segment 2: 15 minutes Discussion of family violence in Native Communities	<ul style="list-style-type: none"> ▪ Lecture PPT Slide 2 - 6 	C:1
Segment 3: 30 minutes Barriers to protection and accountability	<ul style="list-style-type: none"> ▪ PPT Slide 7 - 17 	C:2 K.1
Segment 4: 30 Minutes Jurisdiction in Indian Country and PL-280	Lecture <ul style="list-style-type: none"> ▪ PPT Slides 18 - 23 	C.3 K.2

Topic	Methodology	Learning Objective
Segment 5: 10 minutes Tribal Courts	<ul style="list-style-type: none"> ▪ Small Group Activity - scenario review PPT Slide 24 - 25	K.3
Break: 10 minutes		
Segment 6: 15 minutes Common challenges with restraining orders	<ul style="list-style-type: none"> ▪ Lecture ▪ Large group discussion ▪ Case scenarios <ul style="list-style-type: none"> ▪ PPT Slide 27 - 28 	C:4
Segment 7: 15 minutes Full Faith and Credit	 PPT Slide 29 - 34	
Segment 8: 20 minutes Ways to help	PPT Slide 35-42	V.1
Segment 9: 15 minutes Family Violence Scenarios	-Scenarios. Small group discussion	C.4 S.1 S.2

Topic	Methodology	Learning Objective
		V.4
Closing and Questions 5 minutes		

Public Law 280 – Family Violence Case scenarios

Party files a Request for a Protective Order under California Family Code section 6200. The request includes a request for a move out order. At the hearing, the judge learns that the parties live on the reservation. None of the materials filed with the court disclose the tribal status of the parties. Although not disclosed on the DV-100, at the hearing the court learns that there is a divorce and child custody matter already pending between the parties in the local tribal court, but no orders have yet been issued. How should the state court proceed?

1. Can the state court make a move out order that is effective for a residence on the reservation?
2. Under the protective order provisions of the Family Code can the court make an order that regulates the movements of a tribal member on the reservation?
3. Must / should the court determine if there is an existing protective order from the tribal court? Why?
4. If there is an existing protective order from the tribal court, but the state court was not able to find any record of it within the state court system, what if any steps can or should be taken?

Domestic Violence in Native American Communities

Background Resource Materials

Wagner, Dennis “Whiteriver serial rapist investigation failed, files show” *The Arizona Republic* September 12, 2010.

<http://www.azcentral.com/news/articles/2010/09/12/20100912whiteriver-arizona-apache-reservation-serial-rapist.html>

This article concerns the failed investigation of a serial rapist on the White River Indian Reservation in Arizona. It reveals how underfunding, lack of resources, and wrangling between Bureau of Indian Affairs police and the F.B.I. led to a failure to properly investigate and bring to justice serial rapist posing as a police officer who assaulted at least 17 young women on the Wind River Indian Reservation.

Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA; Amnesty International; 2007

<http://www.amnesty.org/en/library/asset/AMR51/035/2007/en/cbd28fa9-d3ad-11dd-a329-2f46302a8cc6/amr510352007en.pdf>

This research report, published by Amnesty International, describes research conducted in 2005 and 2006 in consultation with Native American and Alaska Native organizations and others. Drawing from this original research as well as existing crime statistic data, the report documents the extent to which Native American women are at risk of some form of sexual violence and explores some of the reasons for this increased risk including chronic under-resourcing of justice systems in Indian country, confusion over jurisdiction and the erosion of tribal jurisdiction.

Elder Abuse in Tribal Communities; Hallie Bongar White, Southwest Center for Law and Policy & Office on Violence Against Women, U.S. Department of Justice; 2004

<http://vaw.umn.edu/documents/elderabusetribe/elderabusetribe.pdf>

This fact sheet describes problems of elder abuse in Native communities and how to address them.

The Facts About Violence Against Women in Indian Country; United States Department of Justice, Office on Violence Against Women; May 2008

<http://www.ovw.usdoj.gov/docs/vaw-indian-country.pdf>

This fact sheet, published by the Office of Violence Against Women and the United States Department of Justice, summarizes statistics and information concerning violence against women in Indian Country.

Criminal Prosecution of Battered Native Women for Failure to Protect; Southwest Center for Law and Policy & Office on Violence Against Women, U.S. Department of Justice; 2005
<http://vaw.umn.edu/documents/failuretoprotectnative/failuretoprotectnative.pdf>

This article examines the trend in charging Native American victims of domestic violence with child abuse, child neglect, or child endangerment solely because of the violent, criminal actions of their abusive partners and the impact of such policies on the reporting of abuse by these women.

Final Report: Focus Group on Public Law 280 and the Sexual Assault of Native Women, Tribal Law and Policy Institute, December 31, 2007
<http://vaw.umn.edu/documents/finalreport/finalreport.pdf>

This report presents the results of research and two day focus group conference on effects of Public Law 280 on effective response to problems of sexual assault against Native Women.

Final Report: Law Enforcement and Criminal Justice Under Public Law 280; Carole Goldberg, J.D. and Duane Champagne, J.D., Principal Investigators; and Heather Valdez Singleton, Project Director; November 1, 2007
<http://www.ncjrs.gov/pdffiles1/nij/grants/222585.pdf>

This report examines the extent to which the jurisdictional scheme created by Public Law 280 has impacted law enforcement and access to criminal justice for Native Americans living in Indian Country under Public Law 280 jurisdiction.

Intersection of Domestic Violence and Child Victimization in Indian Country; Southwest Center for Law and Policy & Office on Violence Against Women, U.S. Department of Justice; 2005
<http://vaw.umn.edu/documents/intersectiondvindian/intersectiondvindian.pdf>

This article discusses the place, role and value of children in traditional Native American societies, the impact of colonization and current issues of child victimization in Indian Country.

Law Enforcement Authority in Indian Country; University of New Mexico School of Law, Tribal Law Journal, Melissa Tatum; 2003/2004

This article discusses issues, challenges, and possible solutions to achieving enforcement of protective orders in Indian country.

Public Law 280 and Law Enforcement in Indian Country—Research Priorities; U.S. Department of Justice, Office of Justice Programs, National Institute of Justice; December 2005

This research report describes the effect of Public Law 280 on access to justice and effective law enforcement in Indian Country.

Stalking in Indian Country; Hallie Bongar White, Southwest Center for Law and Policy & Office on Violence Against Women, U.S. Department of Justice; 2004

<http://vaw.umn.edu/documents/stalkingindiancountry/stalkingindiancountry.pdf>

This article discusses describes the problems in dealing with stalking specifically within Indian Country due to jurisdictional and other law enforcement issues.

Violence Against American Indian and Alaska Native Women and the Criminal Justice Response: What is Known; Ronet Bachman, Heather Zaykowski, Rachel Kallmyer, Margarita Poteyeva, and Christina Lanier; August 2008

<http://www.ncjrs.gov/pdffiles1/nij/grants/223691.pdf>

This report was to provide an overview of the epidemiology of violence against American Indian and Alaska Native women as well as an accounting of the criminal justice responses to this violence

Jimenez, V., & Song, S. (1998). Concurrent Tribal and State Jurisdiction Under Public Law 280. *The American University Law Review*, 47, 1627-1707

Scholarly discussion of the jurisdictional issues arising under Public Law 280.

Useful Links

Mending the Sacred Hoop

<http://www.msh-ta.org>

Tribal Law and Policy Institute: Domestic Violence Resources

<http://www.tribal-institute.org/lists/domestic.htm>

Violence Against Women Online Resources – Tribal Response

<http://www.vaw.umn.edu/categories/1,12>

National Indian Justice Center
<http://www.nijc.org/index.html>

Southwest Center for Law and Policy
<http://www.swclap.org>