

JUDGES GUIDE TO

Domestic Violence Cases

TRIBAL COMMUNITIES AND DOMESTIC VIOLENCE

[2013]



ADMINISTRATIVE OFFICE
OF THE COURTS

This project is supported by Grant Award Number CW11101535 awarded by the California Emergency Management Agency (CalEMA) administering for the STOP Grant Fund Program. The opinions, findings, and conclusions in this publication are those of the author and do not necessarily represent the views of CalEMA or the U.S. Department of Justice, Office of Violence Against Women. CalEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use these materials and authorize others to do so.

ABOUT THIS PROJECT

This project is supported by Grant Award Number CW11101535 awarded by the California Emergency Management Agency (CalEMA) administering for the STOP Grant Fund Program. The opinions, findings, and conclusions in this publication are those of the author and do not necessarily represent the views of CalEMA or the U.S. Department of Justice, Office of Violence Against Women. CalEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use these materials and authorize others to do so.

JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS

Ms. Diane Nunn, Director
Center for Families, Children & the Courts
Ms. Jennifer Walter
Supervising Attorney
Principal Author, Tribal Communities and
Domestic Violence
Ms. Bobbie Welling
Supervising Attorney
Ms. Ann Gilmour
Attorney
Ms. Vida Castaneda
Court Services Analyst
Ms. Angelica Souza
Administrative Coordinator

CALIFORNIA TRIBAL COURT/STATE COURT FORUM EDUCATION SUBCOMMITTEE

Hon. James R. Lambden, Cochair
Associate Justice of the Court of Appeal,
First Appellate District, Division Two
Hon. Robert Moeller, Cochair
Chemehuevi Indian Tribal Court
Associate Justice of the Colorado River Tribes Court of
Appeals
Colorado River Indian Reservation
Hon. Abby Abinanti
Chief Judge of the Yurok Tribal Court
Hon. Leonard P. Edwards (Ret.)
Center for Families, Children & the Courts
Administrative Office of the Courts
Hon. Deborah A. Ryan
Judge of the Superior Court of California, County of Santa
Clara
Hon. Deborah L. Sanchez
Judge of the Superior Court of California, County of Los
Angeles
Hon. Christine Williams,
Chief Judge of the Hopland Band of Pomo Indians Tribal Court
Hon. Claudette White
Chief Judge of the Quechan Tribal Court

For additional information about this publication,
please contact:
Jennifer Walter, Supervising Attorney 415-865-7687,
e-mail jennifer.walter@jud.ca.gov,
fax 415-865-7217

© 2012 by Judicial Council of California/Administrative Office of the Courts. All rights reserved.
Published September 2012

This report is also available on the California Courts website and
<http://www.courts.ca.gov/14851.htm>
For additional copies or more information about this report, please call the Center for
Families, Children & the Courts at 415-865-7739 or write to:

Judicial Council of California
Administrative Office of the Courts
Judicial and Court Operations Services Division
Center for Families, Children & the Courts
Attention: State/Tribal Programs
455 Golden Gate Avenue, San Francisco, California 94102-
3688.

Contents **Page**

Part I. Introduction2
Part II. Barriers Facing Native Victims of Domestic Violence3
Part III. Myths Dispelled.....6
Part IV. The ABC’s of Federal Indian Law Relating to Domestic Violence.....9
Part V. Full Faith and Credit..... 14
Part VI. Law Enforcement in Indian Country 15

Appendix A..... 19
Statutory Authority: Relevant Sections of the Violence Against Women Act and the
Uniform Interstate Enforcement of Domestic Violence Protection Orders Act
Rule 5.386 of the California Rules of Court

Appendix B 26
California Criminal Jurisdiction in Indian Country Pursuant to Public Law 280 and
Violence Against Women Act Reauthorization (2013)

Appendix C 27
Three Steps to Determine Whether a Tribal Court Protection Order is Entitled to Full
Faith and Credit

Appendix D 28
Resource Links

Tribal Communities and Domestic Violence

I. Introduction

A. The Purpose and Scope of this Benchguide

This benchguide will inform judicial officers about barriers; dispel myths about native victims, tribes, and the law; present a primer on federal Indian law; and highlight some of the interjurisdictional challenges state and tribal court judges face when recognizing and enforcing each other's protective orders. By understanding barriers facing native victims, delving into the complexities of federal Indian law, and uncovering the interjurisdictional challenges, courts will be better equipped to make rulings, avoid conflicting rulings, and engage native and non-native service providers and justice system professionals to better serve native victims.

B. Nature of Domestic Violence in Tribal Communities

American Indian and Alaska Native communities in California have been severely affected by domestic violence, sexual abuse, and stalking. Such violence, much of it directed against women, occurs in California as well as elsewhere in the United States. Especially high rates of victimization have been found among Native American women both on and off reservations. Data gathered by the U.S. Department of Justice indicates that Native American and Alaska Native women are more than 2.5 times as likely to be raped or sexually assaulted than women in the United States in general. A U.S. Department of Justice study on violence against women concluded that 34.1% of American Indian and Alaska Native women—more than one in three—will be raped during their lifetimes; the comparable figure for women in the United States as a whole is less than one in five.¹ According to the *American Indians and Crime* report from the U.S. Department of Justice in 2004, Native American women were more likely to be victims of assault and rape/sexual assault committed by a stranger or acquaintance rather than by an intimate partner or family member. In 86 percent of reported rapes or sexual assaults on native women, the perpetrators are non-native. In comparison, only 35 percent of white rape victims reported that the perpetrator was not white. This disparity is not typical of any other ethnicity since perpetrators are usually found to be the same race as the victim.² These statistics underscore the public safety crisis in Indian Country and the severity of the problem facing native women. The violence and victimization rates in California, home to 12 percent of all Native Americans living in the United States (more than any other state),³ mirror the rest of the country.

¹ See Patricia Tjaden and Nancy Thoennes, U.S. Department of Justice, *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women* (2000).

² See U.S. Department of Justice, Bureau of Justice Statistics, *American Indians and Crime* (NCJ 203097) (Dec. 2004).

³ Tina Norris, Paula L. Vines, and Elizabeth M. Hoeffel, "2010 Census Briefs: The American Indian and Alaska Native Population 2010." (Bureau of the Census, Jan. 2012), p. 7, table 2, <http://www.census.gov/prod/cen2010/briefs/c2010br-10pdf> (as of Mar. 5, 2012).

For more information, see Native American Statistical Abstract: Violence and Victimization
<http://www.courts.ca.gov/documents/NatAmStatsAbUpdate.pdf>

C. Unique Obstacles Faced by Native Victims

In addition to the barriers faced by domestic violence victims in general, native victims encounter unique obstacles relating to: (1) reporting domestic violence; (2) the availability and appropriateness of services; (3) access to the court; and (4) enforcement of protective orders.

II. Barriers Facing Native Victims of Domestic Violence

A. Introduction

The Violence Against Women Act encourages jurisdictions to bring together stakeholders from diverse backgrounds to share information and to use their distinct roles to improve community responses to violence against women. These players include, but are not limited to: judges, victim advocates, police officers, prosecutors, probation and corrections officials, and health care professionals. The judge can play an instrumental role. In Indian Country, there are a number of challenges to ensuring victim safety and offender accountability. These challenges include: geographic isolation of much of Indian Country in California, jurisdictional confusion about law enforcement's jurisdiction and judicial authority in Indian Country, historical oppression of Native Americans, which leads to distrust and lack of cultural understanding and culturally appropriate services.⁴ Much of the discussion that follows relies upon the statewide needs assessment conducted by the AOC as part of the Native American Communities Justice Project.

For more information, see statewide needs assessment conducted by the AOC as part of the Native American Communities Justice Project. The policy and research reports are at:
<http://www.courts.ca.gov/8117.htm>

B. Why Native Victims of Domestic Violence May Not Report

A native victim may face fears and challenges in reporting incidents of domestic violence. Lack of reporting is due to a number of interrelated factors, including shame and embarrassment relating to the violent conduct, fear of repercussions from family members and the community, and mistrust of law enforcement, social services, and the court. These barriers are not unique to Native American communities,⁵ although in combination with

⁴ More information on these barriers and how they impact victim safety and offender accountability can be found in the reports from the Native American Communities Justice Project: <http://www.courts.ca.gov/8117.htm>.

⁵ See, e.g., U.S. Department of Agriculture: Safety, Health and Employee Welfare Division, "Domestic Violence Awareness Handbook," www.dm.usda.gov/shmd/aware.htm#HELP (accessed May 5, 2010); C. J. Newton, MA, "Domestic Violence: An Overview," www.aaets.org/article145.htm (accessed May 5, 2010).

other barriers such as geographical distance and prejudicial attitudes, they take on increased salience. For example, while fear of being reported to Child Protective Services for contacting the authorities about family violence and facing potential removal of a child is not unique to Native Americans, participants in the California needs assessment reported that the barrier becomes much higher because it is combined with the historical trauma of losing native children to boarding schools and/or the actions of child protective service agencies. Similarly, although stories of victims being arrested by law enforcement on domestic violence calls come from other communities, participants in the statewide needs assessment believed that such incidents were more common in tribal communities because of prejudicial views about Native Americans (particularly women) or misunderstandings about Native American cultures and communication styles. While victims of domestic violence may experience family pressure to not report, native victims report broader community pressure to keep silent for fear that disclosing may perpetuate stereotypes or myths about native women and tribal communities; such coping strategies were necessary historically to survive, but in domestic violence situations, they are harmful defense mechanisms keeping a victim from speaking out.

While geographical distance is a problem in many rural communities, in many tribal communities, the issue of isolation is more complex. On many reservations, the victim may be isolated without transportation, electricity, or phone services. The victim may be living with or near the perpetrator's family or reservation rather than in her own tribal community; she may fear retaliation, such as losing her housing if she is living in federally subsidized housing on the reservation.

C. The Lack of Available and Appropriate Services

Another obstacle for native victims is the lack of available and quality services for victims of family violence, including safe houses, emergency shelters, counseling, advocates, and other assistance for victims. Many of the non-native-specific services are culturally inappropriate and difficult to access because of distance, and they do not generally meet the needs of victims. In the statewide needs assessment, participants repeatedly raised the following issues:

- Some non-native services, including safe houses, are culturally inappropriate for Native American victims. Highly structured programs with little room for tribal perspectives on healing or the family were mentioned by participants as creating difficulties. In addition, the geographic distance of these programs from tribal lands was also cited as a problem.
- Participants reported that while there are some services specific to native people, there is a lack of information about what services are available—nontribal as well as tribal services—and how to access them.
- Child Protective Services workers sometimes provide victims with an ultimatum to get a restraining order against a family violence perpetrator or face removal of the victim's children.

In relation to services, what can a judge do to improve access to justice for Native American victims of domestic violence?

- 1. Conduct tribal outreach directly or with local tribal and nontribal program staff working in the field of domestic violence prevention.*
- 2. Work with local domestic violence coordinating councils to reach out to tribal communities and invite tribal representation to be on these councils.*
- 3. Identify culturally appropriate services that are available to the tribal communities in your jurisdiction (See the Statewide Directory of Services for Native American Families, which contains contact information on services to assist Indian children and families, where you can search by county, service type, or both.*
<http://www.courts.ca.gov/5807.htm>.)

D. Why Native Victims May Be Reluctant to Go to Court for Protection

Native victims report that their histories, cultures, values, and experiences may not be well understood by judges and court personnel. Historic oppression of and discrimination against Native Americans continues to resonate with the Native American population and affects their interactions with state courts and local agencies. They report that, in general, judges, attorneys, and state and local agency staff have little knowledge of and do not understand the historical experiences of Native American populations and how these experiences continue to affect their lives. Specifically, they identified that these same individuals typically lack knowledge about key cultural and legal concepts, such as sovereignty, Public Law 280,⁶ and historical facts. Some report the perception that a lack of information may have caused many tribal governments in California to be denied funding to develop tribal justice systems and services. The lack of trust and of basic knowledge about state court procedures and legal services on the part of Native Americans, and the corresponding lack of knowledge and understanding on the part of state courts and non-native agencies, were the two primary reasons why Native American victims of family violence may not seek assistance from the courts, other justice agencies, and service providers.

What can a judge do to improve access to justice for Native American victims of domestic violence who may be reluctant to go to court for protection?

- 1. Learn about the specific history and culture of the tribal communities in your jurisdiction. (See resources on tribal communities in California: <http://www.courts.ca.gov/3066.htm>.)*
- 2. Learn about working effectively with tribal governments and communities (See Administration for Children and Families Native American Programming <http://tribal.golearnportal.org/return.php>.)*
- 3. Learn about Public Law 280 (See P.L. 280 [webinar](#) and [curriculum](#).)*
- 4. If you have a tribal court in your jurisdiction, consider meeting with the tribal court judge to explore ways to make both tribal and state courts more accessible to tribal communities.*

⁶ Public Law 83-280, August 15, 1953, codified at 18 U.S.C. 1162, 28 U.S.C. § 1360, and 25 U.S.C. §§ 1321–1326.

E. Why Law Enforcement May Not Enforce an Order Protecting a Native Victim

Some law enforcement agencies and officers will not enforce a tribal protective order unless it can be verified in the California Restraining and Protective Order System (CARPOS) though the California Law Enforcement Telecommunications System (CLETS). Currently most tribal courts and law enforcement agencies in California do not have access to these systems.

What can a judge do to improve access to justice for Native American victims of domestic violence?

Meet with local law enforcement to ask whether they encounter and enforce tribal protective orders.

III. Myths Dispelled

A. Background

Federal Indian law and procedure, a complex area of the law, may be unfamiliar to many justice system professionals. Stereotypes and myths about native people and tribal justice systems may further complicate ensuring access to the courts for native victims of domestic violence. This overview will present factual information in an effort to dispel unintended misperceptions.

1. Myth: State criminal law does not apply on tribal lands.

State criminal laws do apply on tribal lands; however, enforcement presents challenges for many reasons. [See, e.g., *Penobscot Nation v. Stilphen* (Me. 1983) 461 A.2d 478, 488; *State v. Schmuck* (Wash. 1993) 121 Wash.2d 373, 393; Public Law 280, 18 U.S.C. § 1162(a)—grants six states, including California, criminal jurisdiction over offenses committed by or against Indians on the reservations.]

2. Myth: Under current law, tribal courts exercising criminal jurisdiction can adequately protect native women.

Tribes may exercise criminal jurisdiction over Indians who commit crimes in Indian Country. (25 U.S.C. § 1301). However, the United States Supreme Court has ruled that tribal courts may *not* exercise criminal jurisdiction over non-Indians. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). As described above, native women suffer the highest rates of domestic violence, stalking, and sexual assault of any population in the United States.⁷ The majority of perpetrators of

⁷ See U.S. Department of Justice, *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women* (2000) *supra* note 1, and *American Indians and Crime* (NCJ 203097) (Dec. 2004).

these crimes are non-Indian.⁸ Paradoxically, tribal courts may not exercise criminal jurisdiction over non-Indians who commit these crimes in Indian Country. For this reason, native victims are very much dependent on the protection of state courts. [*People v. Ramirez* (2007) 148 Cal.App.4th 1464, 1474 (The states have exclusive criminal jurisdiction over crimes committed on Indian land between non-Indians, as well as victimless crimes committed by non-Indians. See *United States v. McBratney* (1882) 104 U.S. 621 [state versus federal jurisdiction]; *Oliphant v. Suquamish Indian Tribe* (1978) 435 U.S. 191 [tribal courts have no inherent criminal jurisdiction over non-Indians.])]]

3. Myth: Tribal courts' criminal jurisdiction is limited to Indians who are members of that tribe.

There is no bright line to determine who is an Indian for purposes of exercising criminal jurisdiction. However, tribal courts may exercise criminal jurisdiction over those persons who are citizens/members of federally recognized tribes or who are eligible for enrollment with a federally recognized tribe. [See *Ex parte Crow Dog*, 109 U.S. 556 (1883). In the absence of federal statutes limiting it, tribal criminal jurisdiction over the Indian in Indian country is complete, inherent, and exclusive. See *United States v. Lara*, 541 U.S. 193 (2004), upholding Congress's power to restore tribal criminal jurisdiction over nonmember Indians.]

4. Myth: Tribal courts do not have criminal jurisdiction over non-native perpetrators in domestic violence cases.

Under the Violence Against Women (VAWA) Reauthorization Act of 2013, (Title IX of S.47, section 904 (2013)), the federal government authorized criminal tribal court jurisdiction over non-native perpetrators in these cases. VAWA now provides tribes with the authority to hold domestic violence perpetrators accountable for their crimes against native women—regardless of the perpetrator's race. Under these new tribal-jurisdiction provisions:

- Tribes can prosecute non-Indians only for domestic violence, dating violence, and violations of protective orders. Crimes between two strangers, or between two non-Indians, or committed by a person with no ties to the tribe, would not be covered.
- Federal- and state-court jurisdiction over domestic violence would be unaffected.
- Defendants would effectively have the same rights to free appointed counsel meeting federal constitutional standards, and the right to an impartial jury with the jury pool reflecting a fair cross-section of the entire community, including non-Indians.

⁸ See U.S. Department of Justice, Bureau of Justice Statistics, *American Indians and Crime* (NCJ 203097) (Dec. 2004) *supra* note 2.

- Defendants can protect their rights by appealing their convictions to a tribal court and filing a habeas petition in federal court.

Section 904 does not constitute a full restoration of all tribal criminal jurisdiction—only that which qualifies as “special domestic violence criminal jurisdiction.” So there must be an established intimate-partner relationship to trigger the jurisdiction. The scope of the restored jurisdiction is quite narrow. First, the legislation only applies to crimes of domestic violence and dating violence when the victim is an Indian and the crime occurs in Indian Country. Thus, it applies to a narrow category of persons who have established a marriage or intimate relationship of significant duration with a tribal member. Second, for a non-Indian to be subject to tribal court jurisdiction, the prosecuting tribe must be able to prove that a defendant:

1. Resides in the Indian country of the participating tribe;
2. Is employed in the Indian country of the participating tribe; or
3. Is a spouse or intimate partner of a member of the participating tribe. In other words, a defendant who has no ties to the tribal community would not be subject to criminal prosecution in tribal court.

Federal courts have jurisdiction to review such tribal jurisdiction determinations after exhaustion of tribal remedies. The Violence Against Women Reauthorization Act affirms the right of habeas corpus to challenge detention by an Indian tribe, and goes even further by requiring a federal court to grant a stay preventing further detention by the tribe if there is a substantial likelihood that the habeas petition will be granted. The legislation does not raise the maximum sentence that can be imposed by a tribal court, which is one year (unless the tribal government has qualified to issue sentences of up to three years per offense under the Tribal Law and Order Act).

This jurisdictional framework is similar to that established in the civil arena, namely *Montana v. United States*, where the Supreme Court found that tribal governments have civil authority when there is a private consensual relationship with the tribe and a nexus between that relationship and the subject of the litigation. In addition, tribal governments have civil jurisdiction over non-Indians in cases where the actions of the non-Indian threatens tribal political integrity, economic security, or the health, welfare, or safety of the tribe. 450 U.S. 544, 565–566 (1981).

5. Myth: Tribal courts don’t have civil jurisdiction over non-native perpetrators of domestic violence.

Tribal courts have inherent civil jurisdiction over domestic violence cases assuming there is personal and subject matter jurisdiction, regardless of the political status (Indian or non-Indian) of the perpetrator. [See *Montana v. U.S.* (1981) 450 U.S.

544, 565 (Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands); 18 U.S.C § 2265(e)(2003) (tribal court has full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe); *Iowa Mutual Ins. Co. v. LaPlante* (1987) 480 U.S. 9, 18; *Duncan Energy v. Three Affiliated Tribes* (8th Cir.1994) 27 F.3d 1294, 1299 (civil jurisdiction over the activities of non-Indians on reservations lands presumptively lies in tribal courts, unless affirmatively limited by a specific treaty provision or federal statute).]

6. Myth: Public Law 280 eroded tribal court jurisdiction.

Public Law 280 left intact the inherent civil and criminal jurisdiction of Indian nations. The purpose of PL 280 was to improve law enforcement within Indian Country. Since the passage of PL 280, Congress has strongly favored tribal self-government and tribal court development. [*Bryan v. Itasca County, Minnesota* (1976) 426 U.S. 373, 388 (nothing in the legislative history remotely suggests that Congress meant the act's extension of civil jurisdiction to the states should result in the undermining or destruction of tribal government, rather, it contemplates the continuing vitality of tribal government).]

7. Myth: Tribal courts don't have civil jurisdiction over non-Indians on non-Indian land.

Tribal courts have subject matter jurisdiction over civil actions involving non-Indians within their tribal territory. Tribal courts also have subject matter jurisdiction over non-Indians in cases where there is a consensual relationship or a direct threat to the tribe's political integrity, economic security, health, or welfare. [See *Montana v. U.S.* (1981) 450 U.S. 544, 101 S.Ct. 1254); *Merrion v. Jicarilla Apache Tribe* (1982) 455 U.S. 130, 140; *Civil and Criminal Jurisdiction Over Matters Arising in Indian Country* (2000) 1 McGeorge Law Review 973, 1003 (tribal court civil jurisdiction over parties can include any combination of tribal members, nonmember Indians and non-Indians. The tribal governing documents, including the constitution and codes, specify the parties over which the tribe can have personal jurisdiction. For example, a county sheriff may serve process on a tribal member within the reservation, but unless such authority is expressly granted in the tribal code or in a written agreement between the tribe and the county, such service will be improper, and the tribal court will lack personal jurisdiction to hear the case. The jurisdiction may be restricted to tribal members living on the reservation, or it may be very broad and include anyone who comes onto the reservation or conducts any business with the tribe.) See also *John v. Baker* (Alaska 1999) 982 P.2d 738 (the court upheld the tribal court's jurisdiction over a domestic relations dispute between a member and nonmember of the tribe and ordered state trial courts to give effect to tribal court decisions under principles of comity.)]

IV. The ABC's of Federal Indian Law Relating to Domestic Violence

A. General Civil Jurisdiction

The questions of whether a tribal court can exercise its civil jurisdiction and the underlying requirements for doing so are questions of federal law. *National Farmers Union Ins. v. Crow Tribe* (1985) 471 U.S. 845. Generally, a tribe can only exercise subject matter jurisdiction over disputes that arise in Indian Country. The federal definition of Indian Country is set forth in 18 U.S.C. § 1151:

The term “Indian Country,” as used in this chapter, means (a) all land within the limits of any Indian reservation within the jurisdiction of the United States government notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

The United States Supreme Court has held that tribes have exclusive jurisdiction over any civil case involving an Indian defendant when the underlying claim arose in Indian Country. *Williams v. Lee* (1959) 358 U.S. 217; *Strate v. A-1 Contractors* (1997) 520 U.S. 438. This includes civil actions brought by non-Indian plaintiffs against Indian defendants. However, it is unclear whether the exclusive civil jurisdiction of tribal courts also extends to Indian defendants who are citizens/members of other tribes. *Washington v. Confederated Tribes of the Colville Indian Reservation* (1980) 447 U.S. 134.

B. Civil Jurisdiction in Domestic Violence Cases

The Violence Against Women Act (VAWA) was enacted in 1994 (and amended in 2000 and again in 2005 (signed into law Jan. 5, 2006) by Congress to address the problem of inconsistent state enforcement of civil domestic violence laws. Its purpose is “to encourage States, Indian tribal governments, and units of local government to treat domestic violence as a serious violation of criminal law.” Under VAWA, “a tribal court shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe.” See 18 U.S.C. § 2265(e).

C. Criminal Jurisdiction in Domestic Violence Cases

Because tribal governments are sovereign nations, they have the jurisdictional authority to prosecute enrolled members of their tribe, based on violation of tribal code. While tribes have the absolute right to prosecute their own members for any crime, they are limited by

federal law in the amount of jail time they may impose. Under the Indian Civil Rights Act of 1968,⁹ the maximum sentence allowed was one-year incarceration and a \$5,000 fine.¹⁰ These sentencing limitations were expanded to three years and \$15,000 with the passage of the Tribal Law and Order Act of 2010 (TLOA). These limitations do not preclude consecutive sentences for separate offenses. (See *Ramos v. Pyramid Lake Tribal Ct.* (D.Nev. 1985) 621 F.Supp. 967, 970). Nor do they apply to restitution awards or other monetary orders that do not constitute punishment of an offense. (See *Ute Mountain Tribe v. Mills* (Ute Ct. App. 1981) 10 Indian L. Rep. 6046, 6047. However, under the TLOA, a tribal court exercising felony jurisdiction may impose a maximum sentence of 9 years. (Amended section 202 of the Indian Civil Rights Act, (25 U.S.C. § 1302(a)(2)(7)(D).)

Tribal courts do not have criminal jurisdiction over non-Indians, which means they may not be prosecuted and jailed by tribal authorities.¹¹

D. Traditional vs. Western Justice Systems

Generally speaking, crimes are viewed by Indian communities not only as direct offenses against the identified victims, but also as crimes against the community as a whole. The traditional justice system is most similar to the restorative justice and collaborative justice models in western justice systems. Offenders are held accountable for making the victim whole through restitution and reparations, while the community helps to make the offender whole through support and healing practices. A traditional approach would view the individual holistically, requiring a balance of physical, mental, emotional, and spiritual health.

The concept of an individual judge in a hierarchical position on the bench, rendering judgment on another, often removing the offender from the community to a locked facility, resulting in barriers toward reparations to the victim(s), is in contrast to restorative justice practices valued by many tribal communities. This is not to suggest that tribal governments do not believe in appropriate punishment nor need jails and prisons.

E. Remedies in Tribal Court

Not all California tribal courts are exercising jurisdiction in domestic violence cases. For those that are, some have specific domestic violence codes, while others rely on general criminal or civil statutes. For example, the Inter-Tribal Court of Southern California (in the San Diego area) serves 12 member tribes and other nonmember tribes by adjudicating domestic violence cases using the codes and traditions adopted by each of these tribes, whereas the Northern California Tribal Courts Coalition (in Humboldt, Siskiyou, and Shasta Counties) have adopted one domestic violence code (adapted from the Hoopa Tribal Code). Tribes that have adopted domestic violence codes may have differing provisions

⁹ See 25 U.S.C. §§ 1301–1303.

¹⁰ See 25 U.S.C. 1302.

¹¹ See *Oliphant v. Suquamish Indian Tribe* (1978) 435 U.S. 191.

and relief granted under those codes. Depending on the code and the tribe's traditions, a native victim of domestic violence may have a number of remedies in tribal court, some of which would be the same as in state court, but many of which would be unique to tribal court.

Lack of criminal jurisdiction over non-Indians has led to tribes using a range of civil legal strategies to address safety and security for their citizens/members, residents, and visitors. Below is a description of some of the types of civil remedies used in tribal courts today.¹²

Monetary penalties. If the tribal code authorizes, then the court can fine the defendant for violating the tribal civil domestic violence code. The tribal code may also permit the court to assign attorneys' fees, supervised child visitation costs, and court costs.

Restitution. Tribal courts, like state courts, issue restitution orders intended to make victims as whole as possible and to compensate them for their losses. Tribal courts can also order more traditional forms of restitution to compensate victims. Some tribal courts in California use "restorative justice" approaches, such as "wellness court"¹³ or "elder panels." With these approaches, tribal courts are able to draw upon customary and traditional law in adjudicating cases.

Community service. Many tribal codes include language that domestic violence not only harms the victim, but harms the community.

Shame. Unique to tribal courts, some may order the defendant to experience shame, for example, by wearing a sign that says, "I beat my wife and children."

Injunctions. Just as in state court, a tribal court can issue all types of injunctions. A tribal protective order may include injunctions prohibiting the defendant from contacting a victim, visiting certain locations, and attending tribal events.

Forfeiture. Just as in state court, a tribal court can seize property used in the commission of a crime, if its tribal code contains such forfeiture provisions.

Exclusion or banishment. Unique to tribal court is the tribe's right to exclude non-Indians from tribal lands. See *Merrion v. Jicarilla Apache Tribe* (1982) 455 U.S. 130, 144–145. Generally, the term "exclusion" is used for non-Indians and noncitizens/members and "banishment" is used for citizens/members. Tribal courts may use a limited form of exclusion or banishment by prohibiting the defendant from being present at tribal government offices, tribally owned businesses, or tribal ceremonies. Traditionally, the worst punishment that can be handed out, and one that was rarely used, was that of banishment from the community, reserved for those with little hope of redemption.

¹² Excerpted and adapted from Southwest Center for Law and Policy, *Creative Civil Remedies Against Non-Indians* (2008), pp. 24–31.

¹³ For more information about tribal wellness courts, see *Tribal Healing to Wellness Courts: The Key Components*, prepared by the Tribal Law and Policy Institute for the U.S. Department of Justice (2003).

Peace bonds. Some tribal courts may impose a peace bond, unique to tribal courts, as a type of surety bond. Defendants are ordered to post a sum of money to ensure compliance with a court order. If the defendant complies with the court order, the money posted is returned to the defendant.

Civil commitment. Tribal courts, like state courts, may issue civil commitment orders.

Treatment and classes. Tribal courts, like state courts, can issue orders for batterer intervention classes, counseling, or other such treatment. Tribal courts may have broader authority than state courts under their tribal codes to order the defendant to job training, general equivalency diploma (GED), or other classes. Tribal court interventions are culturally appropriate because they are usually developed in consultation with local tribal traditional practitioners to work with offenders to restore harmony and balance to families and tribal communities. [See, e.g., *In re Commitment of Beaulieu* (Minn. 2007) 737 N.W.2d 231, 238 (Minn. Stat. § 253B.212, subd. 1 (2006), authorizes the Minnesota Commissioner of Human Services to contract with Indian Health Service to provide care and treatment for committed tribal members, thereby evidencing the band's "ability to civilly commit its members."); *Necklace v. Tribal Court of Three Affiliated Tribes of the Fort Berthold Reservation* (8th Cir.1977) 554 F.2d 845, 846 (court examining exhaustion in tribal court requirement for habeas relief).]

Civil arrest. Tribal courts can issue civil arrest orders against any person who has violated a previously issued protection order of the tribal court. That person can be detained for a reasonable amount of time until a hearing can be convened. Tribes do not yet have detention facilities, and, as a result, an issue arises as to where the person will be detained. A possible solution may be that tribes can enter into intergovernmental agreements or memoranda of agreement or contracts with counties to pay for beds at county detention facilities. [See *Cabazon Band of Mission Indians* (C.D. Cal. 1998) 34 F.Supp.2d 1195, 1199 (tribal law enforcement authorities have the power to restrain persons who breach the peace on the reservations, and that "[w]here jurisdiction to try and punish the offender rests outside the tribe, tribal officers may exercise their power to detain the offender and transport him to the proper authorities").]

Civil regulatory powers. Tribal courts have inherent civil regulatory authority that can be used in domestic violence cases. For example, a tribal court can:

- Remove the defendant from the lease of a tribal housing property or reassign the lease to the victim;
- Restrict access to or rescind a business license with the tribe;
- Limit a person's access to tribally funded benefits;
- Restrict or rescind hunting or fishing licenses or privileges;
- Disenroll a defendant/tribal member;
- Rescind future per capita disbursements; or
- Restrict access to tribal employment.

V. Full Faith and Credit

Both VAWA and California state law mandate the extension of full faith and credit for tribal court protective orders meeting the VAWA requirements. (See VAWA at 18 U.S.C. § 2265 and the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act at Cal. Fam. Code, §§ 6400–6409, Appendix A.)

A protective order issued by a tribal (or sister-state) court does not need to be registered in California in order to be entitled to full faith and credit and enforcement. However, in practice, many law enforcement agencies and officers will not enforce a protective order unless it can be verified in the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). Currently most tribal courts and law enforcement agencies in California do not have access to these systems.

In order to increase victim safety, many tribal courts and protected individuals seek to register tribal court protective orders with the state courts so that the orders will be entered into CLETS and/or CARPOS. This registration process is designed to facilitate CLETS entry and it is not required to ensure the already existing enforceability of the order. The mechanism for registering a tribal court protective order with a California state court is the Judicial Council form DV-600, *Order to Register Out-of-State or Tribal Court Protective/Restraining Order*. That form can be found at <http://www.courts.ca.gov/documents/dv600.pdf>.

Because many tribal communities are remote with poor access to transportation, personally appearing at the local state court to file the DV-600 and tribal court protective order may be difficult. To help ensure victim safety, the Judicial Council adopted California Rules of Court, rule 5.386, which requires courts, upon the request of a tribal court located within their county, to adopt a written procedure or local rule to permit the fax or electronic filing of any tribal court protective order that is entitled to be registered under Family Code section 6404.

Does my court have a local procedure or rule of court to accept electronic transmissions of tribal protective orders?

If you have a tribal court within your county that is issuing protective orders, or if you otherwise have community members who are seeking to register tribal court protective orders, the AOC state/tribal program staff can offer technical assistance in developing a local rule or written protocol for the registration of tribal court protective orders. (See link for examples of local rules/protocols/agreements in California: <http://www.courts.ca.gov/17422.htm>.)

Is there a tribal court in my jurisdiction?

To learn if there's a tribal court in your county, visit the California Tribal Courts Directory (www.courts.ca.gov/14400.htm) or the California Tribal Court Map (<http://g.co/maps/cvdq8>).

VI. Law Enforcement in Indian Country

Understanding law enforcement authority in Indian Country is important for judges because a judge's protective order is only effective if it can be enforced. Law enforcement on tribal lands has historically been, and remains, a challenging task for tribal communities. According to the National Congress of American Indians:¹⁴

- Police in Indian Country function within a complicated jurisdictional net, answer to multiple authorities, operate with limited resources, and patrol some of the most desolate of territory, often without assistance from partner law enforcement agencies.
- There are only 2,380 Bureau of Indian Affairs and tribal uniformed officers available to serve an estimated 1.4 million Indians covering over 56 million acres of tribal lands in the lower 48 states.
- On tribal lands, 1.3 officers must serve every 1,000 citizens, compared to 2.9 officers per 1,000 citizens in non-Indian communities with populations under 10,000.
- A total of at least 4,290 sworn officers are needed in Indian Country to provide the minimum level of coverage enjoyed by most communities in the United States.
- These departments rarely have more than one officer on duty at any time, and their officers often work without adequate backup.

Law enforcement jurisdiction varies by the location of the offense (on or off reservation land), the status of the parties (the status of the parties as Indian or non-Indian), and the nature of the crime (major crime or misdemeanor). In California, a PL 280 state, officers who have jurisdiction on reservations include the following:

Tribal security officers. These officers are employed by tribes and have security duties on the reservation. They often are given jurisdiction by the tribal government to enforce tribal law and order codes violated by tribal members, and may be granted arrest powers over tribal members and Indians on the reservation only. They have arrest powers only in the capacity of a private citizen.

Tribal police officers. These officers are also employed by individual tribal governments and have tribally authorized police and arrest powers over tribal members committing violations of tribal law and order codes committed on reservation property. Currently, most tribal governments require, at a minimum, graduation from a formal law enforcement academy.

¹⁴ See http://tloa.ncai.org/documentlibrary/2011/08/Talking_Circles_Report_Final_Jul11.pdf (as of June 14, 2012).

Federally deputized police officers. These include Bureau of Indian Affairs (BIA) Special Deputy Officers and Tribal Officers Holding Special Law Enforcement Commissions (SLECs). SLEC officers are hybrid tribal/federal officers, paid by the individual tribal governments, but deputized by the BIA as federal law enforcement officers with the same authority as BIA police officers. These officers are federally empowered to enforce federal laws on and off reservation if a nexus to the reservation exists. These officers may enforce federal laws and arrest non-Indians for violations of federal laws. In addition, these federal officers may enforce observed violations of federal laws while off the reservation and conduct investigations off the reservation.

County sheriff's office or police. These officers have jurisdiction to enforce state law violations committed by all persons in Indian Country, regardless of race or ancestry. Local rural deputies patrol reservation lands in addition to their regular patrol areas. Indian reservations are often considered as other large and remote pieces of private property, with many indigenous residents residing within their boundaries. Sheriff deputies may also enforce tribal criminal codes, if permitted by the individual tribal governments.

California Highway Patrol (CHP). The CHP is a law enforcement agency of the state of California. It has patrol jurisdiction over all California highways and other public roadways. Initially, the CHP's authority was limited to enforcement of the state's Vehicle Code violations; however, in 1995, it merged with the California State Police and has assumed greater responsibility—providing protection in state buildings and facilities, protection of state officials, and assistance in investigations, patrol, and other aspects of law enforcement with county and tribal police.

The scope of law enforcement authority depends on the type of entity and the agreements among entities. The State Police, or CHP, has primary traffic enforcement responsibilities on all public roads in California, which includes many of the county roads that run through California reservations/rancherias. The county sheriffs are responsible for criminal investigation, arrests, and prosecution of crimes that occur in California Indian Country. They have the authority to conduct on-reservation investigations pursuant to allegations of off-reservation crimes. Tribal police do not have the same authority to investigate offenses against tribal members that occurred off tribal lands. Tribal police do “have the same power to restrain those who disturb public order on the reservation, and if necessary, to eject them. Where jurisdiction to try and punish an offender rests outside the tribe, tribal officers may exercise their power to detain the offender and transport him to the proper authorities.” (See *Duro v. Reina* (1990) 495 U.S. 676, 696-697.)

Tribal law enforcement in California is relatively new.

In June 2006, the Sycuan Band of Kumeyaay Indians was the first federally recognized tribe in California to form a police department in San Diego County, employing academy-trained police officers.

A comparison of data collected for the 2002 Census of Tribal Justice Agencies¹⁵ and more current information obtained from California Tribal Police Chief's Association shows a pattern of growth in tribal law enforcement across the state:

- In 2002, 20 tribes (23% of California tribes, compared to 53% nationally) reported having a tribal law enforcement agency. In 2012, this has grown to 39 tribes (about 37% of California tribes). The remaining tribes rely on some combination of state/local law enforcement.¹⁶
- In 2002, 10 agencies employed sworn officers; of these, 5 had a cross-deputization agreement with either the BIA (4) or “neighboring non-tribal authorities” (1). By 2012, this had grown to 17 agencies with sworn officers.¹⁷
- The number of agencies that operate through a PL 93-638 or self-governance contract (6) has been stable from 2002 to 2012.
- Six tribal agencies had arrest authority over non-Indians in 2002. This has risen to 17 agencies in 2012.

Data from the 2002 census shows that California tribes rely more heavily on local law enforcement than non-California tribes.

Tribal Law Enforcement Functions – 2002¹⁸

Which of the following provide law enforcement functions for your tribe?

	<u>California</u>	<u>Non-California</u>
Sworn officers	11%	69%
BIA	7%	39%
State	19%	32%
Local	90%	37%
Tribal Law Enforcement	21%	68%
Traditional Law Enforcement	3%	7%
Game/Fish Wardens	7%	21%

[Categories not listed are Village Police/Public Safety, Housing Authority, Casino]

If a tribe has a police department, the tribal officers may detain any persons for violations of California law and transport them to state or county law enforcement, even if these law enforcement officials are a distance from the reservation. This detention is deemed an arrest. Most tribes in California do not have the financial resources to operate a police department.¹⁹

¹⁵ Steven W. Perry, Bureau of Justice Statistics, Census of Tribal Justice Agencies in Indian Country, 2002 (NCJ 205332) (Dec. 2005), <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=543> (as of Sept. 19, 2011).

¹⁶ *Id.*

¹⁷ Four additional tribes are in the process of establishing law enforcement agencies.

¹⁸ Perry, *supra* note 15.

¹⁹ As of the publication of this benchguide, 20 of 109 federally recognized California tribes have a police department.

While state and county law enforcement have police powers on Indian lands in California, they may be unable to respond quickly and effectively because many California tribal communities are remote, located far from urban centers, and lack electricity and passable roads. Residences in tribal communities may be located many miles apart and their homes difficult to find because there are no street addresses or maps. For these reasons, local law enforcement may find it is difficult to effectively patrol and respond to emergency calls from native persons living on California reservations and rancherias.

In some counties, local law enforcement agencies have entered into cross-deputization agreements²⁰ with tribal governments allowing for mutual aid and assistance, regardless of jurisdictional boundaries. These agreements can memorialize how federal, tribal, state, and county officers work concurrently in law enforcement, but such agreements can be rescinded by local and state governments at any time.

The first enforcement officials called to the scene on a California reservation/rancheria may be tribal police, BIA officers, state police, or county law enforcement. Any of these officers may initiate an investigation and/or detain a suspect (regardless of race/ethnicity). Any of these officers may refer the case for prosecution. The tribal police may refer the case to tribal court if there is a tribal court; the tribal court will have civil jurisdiction over the defendant (regardless of political status as Indian or non-Indian), but criminal jurisdiction only if the defendant is a member of the tribe. If there is no tribal court exercising jurisdiction, the case should be referred to state court.

What if tribal law enforcement detains a person for violation of a state protective order and there is no cross-deputization agreement, how will this case come before the state court judge? Tribal law enforcement will deliver the detained person to the county sheriff or police, and they are obligated to treat the case just as they would have had they detained the person.

²⁰ At least three tribes have cross-deputization agreements. See <http://www.courts.ca.gov/17422.htm>.

Appendix A

Violence Against Women Act, 18 U.S.C. § 2265:

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

(b) Protection order.--A protection order issued by a State, tribal, or territorial court is consistent with this subsection if--

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

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

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

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

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

(d) Notification and registration.--

(1) Notification.--A State, Indian tribe, or territory according full faith and credit to an order by a court of another State, Indian tribe, or territory shall not notify or require

notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State, tribal, or territorial jurisdiction unless requested to do so by the party protected under such order.

(2) No prior registration or filing as prerequisite for enforcement.--Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State, tribal, or territorial jurisdiction.

(3) Limits on Internet publication of registration information.--A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

(e) Tribal court jurisdiction.--For purposes of this section, a tribal court shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe.

Part 5. Uniform Interstate Enforcement of Domestic Violence Protection Orders Act ([Refs & Annos](#))

§ 6400. Short title

This part may be cited as the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

§ 6401. Definitions

In this part:

- (1) “Foreign protection order” means a protection order issued by a tribunal of another state.
- (2) “Issuing state” means the state whose tribunal issues a protection order.
- (3) “Mutual foreign protection order” means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.
- (4) “Protected individual” means an individual protected by a protection order.
- (5) “Protection order” means an injunction or other order, issued by a tribunal under the domestic violence, family violence, or antistalking laws of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to, another individual.
- (6) “Respondent” means the individual against whom enforcement of a protection order is sought.
- (7) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or any branch of the United States military, that has jurisdiction to issue protection orders.
- (8) “Tribunal” means a court, agency, or other entity authorized by law to issue or modify a protection order.

§ 6402. Judicial enforcement of order

(a) A person authorized by the law of this state to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a tribunal of this state. The tribunal shall enforce the terms of the order, including terms that provide relief that a tribunal of this state would lack power to provide but for this section. The tribunal shall enforce the order, whether

the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of this state for the enforcement of protection orders.

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

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

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

(1) Identifies the protected individual and the respondent.

(2) Is currently in effect.

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

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

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

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

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

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

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

§ 6403. Nonjudicial enforcement of order

(a) A law enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of this state. Presentation of a protection order that identifies both the protected individual and the respondent and, on its face, is currently

in effect constitutes, in and of itself, probable cause to believe that a valid foreign protection order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.

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

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

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

§ 6404. Registration of order

(a) Any foreign protection order shall, upon request of the person in possession of the order, be registered with a court of this state in order to be entered in the Domestic Violence Restraining Order System established under [Section 6380](#). The Judicial Council shall adopt rules of court to do the following:

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

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

(b) No fee may be charged for the registration of a foreign protection order. The court clerk shall provide all Judicial Council forms required by this part to a person in possession of a foreign protection order free of charge.

§ 6405. Immunity

There shall be no civil liability on the part of, and no cause of action for false arrest or false imprisonment against, any peace officer who makes an arrest pursuant to a foreign protection order that is regular upon its face, if the peace officer in making the arrest acts in good faith and

has reasonable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order. If there is more than one civil order regarding the same parties, the peace officer shall enforce the order that was issued last. If there are both civil and criminal orders regarding the same parties, the peace officer shall enforce the criminal order issued last. Nothing in this section shall be deemed to exonerate a peace officer from liability for the unreasonable use of force in the enforcement of the order. The immunities afforded by this section shall not affect the availability of any other immunity that may apply, including, but not limited to, [Sections 820.2](#) and [820.4 of the Government Code](#).

§ 6406. Other remedies

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

§ 6407. Uniformity of application and construction

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

§ 6408. Severability clause

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

§ 6409. Application of Part

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

California Rules of Court Rule 5.386

Rule 5.386. Procedures for filing a tribal court protective order

(a) Request for written procedures for filing a tribal court protective order

At the request of any tribal court located within the county, a court must adopt a written procedure or local rule to permit the fax or electronic filing of any tribal court protective order that is entitled to be registered under Family Code section 6404.

(b) Process for registration of order

The written procedure or local rule developed in consultation with the local tribal court or courts must provide a process for:

- (1) The tribal court or courts to contact a representative of the superior court to inform him or her that a request for registration of a tribal court protective order will be made;
- (2) Confirmation of receipt of the request for registration of the order; and
- (3) Return of copies of the registered order to the tribal court or the protected 1 person.

(c) No filing fee required

In accordance with Family Code section 6404(b), no fee may be charged for the fax or electronic filing registration of a tribal court protective order.

(d) Facsimile coversheet

The *Fax Transmission Cover Sheet for Registration of Tribal Court Protective Order* (form DV-610) or similar cover sheet established by written procedure or local rule must be used when fax filing a tribal court protective order. The cover sheet must be the first page transmitted, to be followed by any special handling instructions needed to ensure that the document will comply with local rules. Neither the cover sheet nor the special handling instructions are to be filed in the case. The court is not required to keep a copy of the cover sheet.

Rule 5.386 adopted effective July 1, 2012.

APPENDIX B

California Criminal Jurisdiction in Indian Country Pursuant to Public Law 280

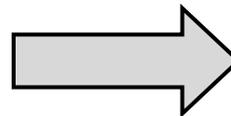
Offender	Victim	Jurisdiction
Non-Indian	Non-Indian	State jurisdiction is exclusive of federal government and tribal jurisdiction with one exception: tribes can prosecute non-Indians for domestic violence, dating violence, and violations of protective orders.
Non-Indian	Indian	State jurisdiction is exclusive of federal government and tribal jurisdiction with one exception: tribes can prosecute non-Indians for domestic violence, dating violence, and violations of protective orders.
Indian	Non-Indian	State has jurisdiction exclusive of federal government but tribe may exercise concurrent jurisdiction.
Indian	Indian	State has jurisdiction exclusive of federal government but tribe may exercise concurrent jurisdiction.
Non-Indian	Victimless	State jurisdiction is exclusive.
Indian	Victimless	There may be concurrent state, tribal, and, in an option state, federal jurisdiction. There is no state regulatory jurisdiction.

Three Steps to Determine Whether A Tribal Court Protection Order Is Entitled To Full Faith And Credit

Step 1: Does the tribal court have **personal jurisdiction** over the defendant because:

- a) The defendant has “minimum contacts” with the tribe (e.g. violated the order on tribal lands, is present on tribal lands, is doing business on tribal lands, etc.)? **or**
- b) The defendant has consented to the jurisdiction of the court or waived any objections to the exercise of personal jurisdiction in this matter by:
 - 1) Voluntarily appearing before the tribal court **or**
 - 2) Filing a motion, response, answer, or pleading in tribal court?

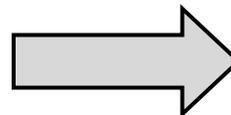
If yes,



Step 2: Does the tribal court have **subject matter jurisdiction** over the defendant because the violation of the order occurred within the territorial jurisdiction of the tribal court **and** the defendant:

- a) Is a member of or eligible for membership with that tribe? **or**
- b) Is a member of another tribe or is a non-Indian **and**
 - 1) The defendant had entered into a consensual relationship with the tribe or its members through commercial dealing, contracts, leases or “other arrangements” (e.g. is married to a tribal member, has a child in common with a tribal member, is employed by the tribe, etc.)? **or**
 - 2) The conduct of the violation threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe?

If yes,



Step 3: Is the **underlying order otherwise valid** and entitled to Full Faith and Credit enforcement under 18 U.S.C §2265 of the Violence Against Women Act?

If you have answered “Yes” to all three questions above, the tribal court has issued a valid domestic violence protection order entitled to Full Faith and Credit.

Appendix D

California Tribal Court Directory—searchable by court and county; see link <http://www.courts.ca.gov/14400.htm>

Tribal Law and Order Act; see link: <http://tloa.ncai.org>

Native American Family Violence Resources Directory—searchable by county; see link <http://www.courts.ca.gov/5807.htm>

Examples of cross—deputization agreements in California; see link: <http://www.courts.ca.gov/17422.htm>

Examples of local rules/protocols/agreements to implement California Rules of Court, rule 5.386, ensuring full faith and credit for tribal protective orders; see link: <http://www.courts.ca.gov/17422.htm>

California Police Chiefs Association; see link: <http://californiapolicechiefs.org>

California Tribal Police Chiefs Association; see link: <http://catpca.org/id1.html>