

## 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 adjudicates domestic violence cases using the codes and traditions adopted by each of the member 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 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.

**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 the victim as whole as possible and to compensate the victim for her losses. Tribal courts can also order more traditional forms of restitution to compensate the victim for her losses. Some tribal courts in California use "restorative justice" approaches, such as "wellness court" 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. (Insert example from Yurok Tribal Code and traditional forms of community service in domestic violence cases)

**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 like 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, attending certain events etc.

**Forfeiture-** Just like 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*, 455 U.S. 130, 144-145 (1982). 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.

Peace bonds- Unique to tribal courts, some may impose a peace bond 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. The United States Supreme Court held that sexually violent offenders who have a “mental abnormality” or “personality disorder” may be subject to involuntary commitment. See *Kansas v. Hendricks*, 521 U.S. 346 (1997).

Treatment and Classes- Tribal courts, like state courts, can issue 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, 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.

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. The issue becomes where to detain the person because in California, tribes do not yet have detention facilities. Tribes can enter into intergovernmental agreements or memoranda of agreements or contracts with counties to pay for beds at county detention facilities (Check to see if such agreements exist in California.)

Civil regulatory powers- Tribal courts have inherent civil regulatory authority which 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 or rescinding a business license with the tribe
- limit a person’s access to tribally funded benefits
- restrict or rescinding hunting or fishing licenses or privileges
- disenroll a defendant/tribal member
- rescind future per capita disbursements
- restrict access to tribal employment