

Mutual Solutions for the Safety of Native Women in Public Law 280 States

Resource Manual



Photograph by Dugan Aguilar © 2006



NATIONAL INDIAN JUSTICE CENTER

5250 Aero Drive
Santa Rosa, CA 95403
Phone: (707) 579-5507
www.nijc.org

TABLE OF CONTENTS

	Page
I. Introduction	1
II. Accessing Justice Through State Courts	3
III. Communication and Collaboration Between Tribal, County and State Officials .	4
Written Protocols and Agreements Presentation	5
Sample Agreement - Hoopa Tribe	19
Consultation and Coordination with Tribal Governments	23
IV. Future of P.L. 280: Repeal or Retrocession	25
P.L. 280 Presentation	26
P.L. 280 Defined	38
V. Police Programs and Protection	49
Sample MOU	51
VI. Reservation Violence Prevention	53
Reservation Violence Presentation	55
VII. Domestic Violence: Courts and Resources	65
Full Faith and Credit - Sample Provision	68
VAWA Section Summaries	70
VIII. Sexual Assault Prevention	95
Turning Points: Defining Violence in Tribal Communities	96
Improving Community Response to SVIP	99
Developing Tribal Code Provisions that Address SVIP	110
IX. The Adam Walsh Act/Helping Tribes Achieve Compliance	163
Sex Offender Registration Policies and Procedures Manual/Umatilla	170
Model Tribal Sex Offender Registration Code	183
X. Next Steps	210

Mutual Solutions for the Safety of Native Women in Public Law 280 States

Resource Manual

This project was supported by Grant No. 2008-TA-AX-K036 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

Introduction

In general the attendees responses to the Mutual Solutions for the Safety of Native Women in Public Law 280 States conference conducted November 19-21, 2009 in San Diego California were very positive. The conference served quite effectively the need to bring together service providers to address the law enforcement impediments caused by P.L. 280 to providing adequate protection for DV victims. This publication is a summary of resources presented at the conference and gleans any “best practices” that emerged from the meeting.

The conference planning included conference calls with advisory committee, hotel negotiations and agreement, telephone discussions with OVW program officials, scholarship assignments, presenter selections, travel and lodging arrangements for presenters and staff, and other conference responsibilities.

The conference began with a morning plenary session and ended on the third day with a morning plenary session. These sessions were very informative and well attended by the participants.

The purpose of the conference was to examine the issues that prevent timely law enforcement, prosecutorial and victim’s services to Native American women who suffer the trauma of domestic violence in the Indian country of Public Law 280 states.

History of P.L. 280

In the early 1950’s the federal policy makers launched a new federal policy in Indian affairs called “Indian termination.” After House Resolution 108 that called for “freeing” the Indians from the federal dominion, Congress enacted P.L. 280 that served as a “jumpstart” piece of legislation to carry Indian termination forward. President Nixon repudiated “Indian Termination” and called for a new policy of self-determination; yet, Congress has never repealed P.L. 280. Today, as in 1953, state and County law enforcement officers struggle with P.L. 280 and what it means to them in their work.

Public Law 280 served as an enabling piece of legislation for termination efforts by transferring federal criminal jurisdiction to five “mandatory” states and one territory

(California, Minnesota, Oregon, Nebraska, Wisconsin and at that time the territory of Alaska). Limited civil adjudicatory jurisdiction was also transferred.

Public Law 280 was an unfunded federal mandate to the mandatory states – expanded jurisdiction but no funding for services. This transfer of criminal jurisdiction that anticipated local law enforcement services provided no federal funds for the implementation of those services in Indian country in these states. On the tribal side the federal government had no interest in assisting tribal governments in these Public law 280 states to improve tribal justice systems because these tribes were targeted for termination. The federal trust responsibility to these tribes was to be extinguished under the “termination policy”.

Historically, domestic violence on a national scale often went unabated in American homes because women were required to formally initiate prosecutions. The criminal justice system provided no safety net. Today that is changing with the implementation of mandatory arrest statutes. However, Native American women of Indian country in Public law 280 states often suffer in silence because they are reluctant or unable to seek assistance outside their own communities and there is no help within their communities because of the lack of criminal justice systems with the tribal governments. Additionally, there is some indifference by local law enforcement to serving Native women because of the historical jurisdictional problems and racial issues.

Today, DOJ studies indicate a dramatic increase in domestic violence involving sexual, physical and emotional assaults upon Native women and their children. This manual is a resource for individuals seeking to eliminate these crimes against Native American women who live in Indian country in Public law 280 states.

Accessing Justice Through State Courts: Barriers & Strategies

Presenter: Ann Gilmour, Jennifer Walter / Center for Families, Children & the Courts
Judicial Council of California – Administrative Office of the Courts

Description: Due to the lack of resources for tribal courts and law enforcement in Public Law 280 States such as California, Native American victims of Domestic Violence living in PL-280 states must often rely on state courts and agencies for protection and access to justice. Research over the last several years has indicated that there are a number of barriers for Native American victims of Domestic Violence gaining protection and access to justice through state courts. This session examined these barriers and various strategies to overcome them - with a focus on state/tribal collaboration, which were formulated as part of a recent project undertaken by the Judicial Council of California, Administrative Office of the Courts.

Commentary:

If native Domestic Violence Victims of any P.L. 280 state are going to receive appropriate services, there must be positive relationships between tribal officials, local law enforcement, and the state courts hearing the D/V cases. The tribes of California are fortunate in that the policymakers or the state judiciary embrace the need to cooperate with tribes in seeking justice for victims of domestic violence. The Chief Justice of the California Supreme Court has weighed in affirmatively on promoting cooperative efforts between the emerging tribal courts and the state courts. This presentation demonstrated the important steps taken by California Judicial Council and the Administrative Office of the Courts (AOC) to forge a positive relationship with California tribes. Tribes from other P.L. 280 states can benefit from learning about the development of this relationship. Which has been the product of over ten years of AOC committee work by key members like Raquelle Myers and Donna Clay Conti paving the way for this relationship to blossom.

Communication and Collaboration between Tribal Councils and County/State Officials in Public Law 280 States Concerning Domestic Violence Against Native Women

Presenter: Joe Myers / The National Indian Justice Center

Presenter: William Johnson / Umatilla Tribal Court

Description: Since its enactment in 1953, Public Law 280 has generated an argument about who pays for law enforcement services to Indian country. Some county and tribal officials remain engaged in a void concerning communication and cooperation because of the unfunded mandate status of P.L. 280.

Commentary:

Because P.L. 280 became a federal “unfunded” mandate that made five (5) states (California, Nebraska, Oregon, Wisconsin, and Montana) and the then one (1) territory of Alaska responsible for criminal law enforcement on Indian lands in those states, hostility surfaced immediately about just who was supposed to pay for the criminal law enforcement services. The tribes in those five (5) states and one (1) territory were scheduled to be “terminated” from the federal / Indian “trust” relationship. The federal government was opting out of the “trust” relationship (the Indian business). The states were on their own and it was thought by the federal policy makers that the states would prevail in the long term.

From 1953 until the rise of Indian casino wealth there was little attention paid by state law enforcement agencies to their duty to police Indian country in PL 280 states. With the coming of Indian casino wealth certain tribes were able to pay for the police services that were promised them 30 years earlier pursuant to P.L. 280.

Since law enforcement in the United States harbors much racism and resentment, it will take time to have an honest dialogue about eliminating the racism problems that range beneath the surface. Historically, Native Americans are viewed as inferior beings who are cared for by the federal government.

If the gaming tribes were not wealthy, the chronic “status quo” of little or no police services for Indian country in P.L. 280 states would remain in place. However, it will take more than money to change attitudes of deputy sheriffs who look negatively upon Indian women who remain victims of domestic violence. All too often stereotypical profiles and preconceived notions about the community impede the effective delivery of services to tribal families in crisis.

HOBBS, STRAUS, DEAN, & WALKER, LLP



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Written Protocols and Agreements

**MUTUAL SOLUTIONS FOR THE SAFETY
OF NATIVE WOMEN IN PL 280 STATES**

**SAN DIEGO, CALIFORNIA
NOVEMBER 19-21**

Tim Seward
Hobbs, Straus, Dean & Walker, LLP
Sacramento, CA
916-442-9444
tseward@hobbsstraus.com



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

**Why is Intergovernmental Cooperation
Needed in PL 280 States?**

- Public Law 83- 280 delegated federal jurisdiction of most offenses committed in Indian country to certain states.
- PL 280 creates a new layer of complexity, and resulted in a lack of federal support to tribal law enforcement and related services and inhibited development of tribal justice systems.
- PL 280 created a jurisdictional vacuum
- State police are not directly accountable to the tribal community
- States do not have civil regulatory jurisdiction



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Why is Intergovernmental Cooperation Needed in PL 280 States?

- Indian tribes retain inherent criminal jurisdiction and share concurrent criminal jurisdiction with PL 280 states, but tribal jurisdiction is limited to Indians.
- Authority of tribes to punish offenders limited by ICRA
- Civil regulatory jurisdiction was not delegated to PL 280 States
- Violent crime rates in Indian country is nearly twice the national average and 34% of Indian and Alaska Native women will be raped in their lifetime and 39% will be subject to domestic violence.
- Department of Justice reports that in 86% of reported cases of rape or sexual assault against Indian or Alaska Native women, the perpetrators are non-Indian.



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

The Affect of Public Law 280 (Public Law 83-280)

- Concurrent jurisdiction
- Historic misunderstanding of PL 280
- Affect on development of tribal programs
- Research has identified a lack of direct accountability and overstepping of authority in some areas, such as law enforcement.
- How the relationship may be altered by the Tribal Law and Order Act (S. 797) - potential restoration of federal jurisdiction, additional federal assistance, and incentives for state, tribal, and local law enforcement cooperation.



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Addressing Threats to Native Woman Through Intergovernmental Agreements

Programs, offices and agencies that have a role in protecting Native woman:

- Law Enforcement
- Prosecution
- Housing
- Investigations
- Sexual Offender Lists (VAWA and Adam Walsh)
- Courts (enforcement of Protective Orders, civil contempt orders, and orders excluding violators from tribal lands)
- Victim Services
- Medical Treatment
- Protective Services
- Social Services and TANF

How may these programs, offices, and agencies improve services and protection through intergovernmental agreements and protocols?



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Range of Intergovernmental Agreements and Protocols

There are a variety of agreements and protocols that can be made between governments, agencies, or between staff. These range from informal and unwritten working agreements to formal, binding contracts.

- Working Relationship/Informal Protocols
- Written Protocols
- Memorandum of Understanding
- Memorandum of Agreement
- Subrecipient/Grant Agreement/Contract for Services



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Working Relationship/Informal Protocols

Knowing relevant counterparts, contact information, procedures; information sharing

Examples

- Sharing information and best practices (note the need to be careful about sharing certain information)
- Being able to contact a counter part during an emergency situation
- Knowing available government services relevant to a situation



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Working Relationship/Informal Protocols

- Potential Benefits
 - Develops personal relationships and informal procedures
 - Avoids political and legal issues
 - Focuses on the people served and services provided
- Potential Disadvantages
 - May unintentionally result in liability
 - Does not extend to other agencies or governing bodies
 - Personality Based (needs to be redone every time a new person brought in)



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Written Protocols

Internal written protocols may address a number of issues that will facilitate coordination between agencies within a government as well as intergovernmental cooperation. Protocols may support informal or formal agreements.

- **Examples**

- Protective Orders

- Passport Program

- Inyo County Protective Order Protocol

- Investigation of sexual assault cases

- Assistance and Protection of victims and witnesses



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Written Protocols

- **Potential Benefits**

- Requires thinking through situations and establishing procedures

- Provides other agencies and governments with an understanding of your procedures

- Internal discretion retained

- **Potential Disadvantages**

- If protocols are top down and inflexible they may inhibit new solutions



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Memorandum of Understanding

A document describing a bilateral or multilateral agreement between parties expressing joining goals between the parties and indicating an intended common line of action. It is often used in cases where parties either do not intend to create a binding legal commitment or in situations where the parties cannot create a legally enforceable agreement.

- **Examples**

MOU between Humboldt County and the Tribal Governments Roundtable



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Memorandum of Understanding

- **Potential Benefits**

Statement of mutual goals

Commitment of governing body

Authorization for staff

- **Potential Disadvantages**

Takes time to secure political will and approval

May be more general in nature

Often not legally binding



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Memorandum of Agreement

A document setting out the responsibilities and duties between parties to work in partnership on certain projects or issues and setting out the agreed upon binding responsibilities of the partners. Often there is an obligation of funds or a delegation of authority attached to certain terms in the agreement. Generally such documents are drafted to establish binding obligations

- Examples
 - Deputization Agreements
 - Mutual Aid Agreements



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Memorandum of Agreement

- Potential Benefits
 - Agreement between governments
 - May include a delegation of authority
 - May include the transfer of funding
- Potential Disadvantages
 - Can take a long time to negotiate
 - Raises questions of dispute resolution and liability
 - Sometimes narrowed to avoid intractable issues



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Subrecipient Agreement/Grant Agreement/Contract for Services

Documents used when a primary recipient of funding from some other source (e.g. the federal or state government) wishes to pass a portion of the funds to another party to administer a part of the program. Generally the prime recipient remains ultimately responsible to the funding source and must assure that the funds are administered in accordance with all the funding requirements.

- **Examples**

Certain Grants administered by the U.S. Department of Justice's Office of Justice Programs.

- **Potential Benefits**

Allows another government to administer a program directly

Greater connection between the service provider and the program beneficiaries.

- **Potential Disadvantages**

Need to verify and enforce compliance with program requirements

Liability for disallowed costs



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Challenges Arising with Many Agreements

- Authorizing Authority
- Political Will or Opposition
- Liability (Tort and Use of Funds)
- Dispute Resolution
- Control/Delegation of Authority
- Accountability/Verification
- Operational Matters (e.g. computer software, internal procedures, forms,)
- Confidentiality



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Importance of Authorizing Authority

Example of Express Federal Authorization

- Indian Child Welfare Act
“States and Indian tribes are authorized to enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings, including agreements . . . which provide for concurrent jurisdiction between states and Indian tribes.”
25 U.S.C. 1919.
- Adam Walsh Act (Sex Offender Registration and Notification Act) expressly authorizes tribes to enter into cooperative agreements with states and other tribes to implement. DOJ Guidance recognizes that tribes in PL 280 states retain inherent authority to maintain list and that states may delegate authority for registry to tribes.



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Importance of Authorizing Authority

Example of federally mandated negotiation

- Title IV-E (Foster Care and Adoption Ass't Act) as amended in 2008 by P.L. 110-351
“the State will negotiate in good faith with any Indian tribe, tribal organization, tribal consortium in the State that requests to develop an agreement with the State. . .”
42 U.S.C. 671(a)



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Importance of Authorizing Authority

Example of implicit federal authorization

Title IV-E (authority prior 2008 amendments)

“the child’s placement and care the responsibility of – (ii) any other public agency with which the State agency administering . . . the State plan has made an agreement . . .”



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Importance of Authorizing Authority

Other Federal examples of authorization

- TANF – Tribal plan carved out of State plan through negotiations with Federal government and authorization of agreements between States and Tribes for administration of tribal program.
- Mandated consultation – Federal Highway Act, National Historic Preservation Act.



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Importance of Authorizing Authority

Examples of State Authorization

- California law authorizing Title IV-E and ICWA agreements
“the director may enter into an agreement, in accordance with Section 1919 of Title 25 of the United States Code, with any California Indian tribe . . .”

WIC 10553.1

It also provides that implementation of any agreement may not be construed to impose liability upon, or to require indemnification of any participating country or the State.

- California law requires the Department of Social Service to make allocations to, collect data from, and submit waiver requests on behalf of tribal TANF programs and requires counties to consult with tribal TANF programs regarding the transfer of administrative responsibilities. WIC 10553.2



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Authorizing Deputization of Tribal Police Different Approaches

- Minnesota (Section 626.93)
Authorizes tribal law enforcement to exercise concurrent jurisdiction under the State code provided the tribe agrees to liability for actions of law enforcement functions, waives its sovereign immunity regarding such claims, provides a bond or insurance, meets POST standards, submits to certain state laws relating to peace officers. Also requires execution of a cooperative agreement regarding mutual aid, cooperation, and regulation of provision of law enforcement services.



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Authorizing Deputization of Tribal Police Different Approaches

- California (Penal Code 830.6(b))
Whenever any person designated by a Native American tribe recognized by the United States is deputized or appointed by a county sheriff as a reserve or auxiliary sheriff and is assigned to prevention of crime and general enforcement of the laws of this state is a peace officer.”
- Nevada
Authorizes tribal police to enforce state law and to arrest non-Indians on tribal lands for violation of state law and turn them over to local governments for prosecution. NRS 171.1255. Authorizes State POST to enter into agreements with an Indian tribes to provide training to and certification of persons employed as peace officers. NRS 289.510



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Political Will

- Is there a mandate?
- Are there financial incentives?
- Are there mutual needs and benefits?
- Is there governmental recognition of a problem and do they accept responsibility?
- Is there a history of effective cooperation?



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Tort Liability Provisions

There is a range of possible provisions:

- Silence
- Reliance on Federal Tort Claims Act
- Injunctive Relief against an individual officer
- Required insurance
- Insurance that precludes the insurer from relying on a tribe's sovereign immunity
- A limited waiver of a tribe's sovereign immunity



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Liability For Use of Funds

Agreements Transferring Funds

- Withholding future funds
- Termination of Agreement
- Limited Waiver of Sovereign Immunity for Disallowed Costs
- Limited Waiver of Sovereign Immunity for entire grant amount
- Bond requirements



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Dispute Resolution

A range of options

- Mediation/immediate termination
- Discontinuance of funding
- Binding Arbitration
- Federal Court (if federal action)
- Tribal or State Court



Washington, DC
(202) 822-8282
Portland, OR
(503) 515-1745
Oklahoma City, OK
(405) 602-9425
Sacramento, CA
(916) 442-9444

Elements Needed for an Agreement

- Trust
- Familiarity
- Will



AGENDA ITEM NO. _____

C-8

SHERIFF'S OFFICE
COUNTY OF HUMBOLDT825 FOURTH STREET
EUREKA, CALIFORNIA 95501-0515 PHONE (707) 445-7251

DATE: September 29, 2003 For Meeting of: October 14, 2003

TO: Board of Supervisors

FROM: Gary Philp, Sheriff

SUBJECT: APPROVAL OF THE AGREEMENT BETWEEN THE HOOPA VALLEY TRIBE, THE COUNTY OF HUMBOLDT, AND THE SHERIFF OF HUMBOLDT COUNTY FOR THE DEPUTIZATION OF QUALIFIED HOOPA VALLEY TRIBAL POLICE OFFICERS

RECOMMENDATION:ON FILE WITH THE
CLERK OF THE BOARD

It is recommended that the Board of Supervisors:

1. That the Board of Supervisors approve the agreement between the Hoopa Valley Tribe, the County of Humboldt, and the Sheriff of Humboldt County for the deputization of qualified Hoopa Valley Tribal Police Officers in compliance with California Penal Code Sections 830.6 and 830.8;
2. That the Board of Supervisors direct the Chairman of the Board to sign the agreement on behalf of the Humboldt County Board of Supervisors;
3. Authorize the Sheriff to sign the agreement between the Hoopa Valley Tribe, the County of Humboldt, and the Sheriff of Humboldt County and;
4. Instruct the Clerk of the Board to return two (2) fully executed documents to the Sheriff's Office, Attn: Janet Held for further processing.

DISCUSSION:

The unique culture and history of the Hoopa Valley Tribe, the geographic remoteness of the Hoopa Valley Indian Reservation, and the structure of Tribal and Federal Indian laws within the exterior boundaries of the Hoopa Valley Indian Reservation, at times make it difficult for Humboldt County Deputy Sheriff's to carry out their peace officer duties enforcing the state law pursuant to Public Law 280 on the Hoopa Valley Indian Reservation.

In addition, because of budget constraints the Humboldt County Sheriff's Office has not been able to allocate law enforcement resources on the Hoopa Valley Reservation in a manner which would allow us to provide a twenty-four hour a day, seven day a week, law enforcement presence.

GP:JH:kmw
agnhoopa
Prepared by: CAO Approval: REVIEW:
AuditorCounty Counsel 

Personnel

Risk Manager 

Other

TYPE OF ISSUE:

☒ XX Consent
☐ Departmental
☐ Public Hearing
☐ Other

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon the motion of Supervisor WOOLLEY
seconded by Supervisor GEIST
and unanimously carried by those members
present, the Board hereby adopts the
recommended action contained in this report.Dated: October 14, 2003

Lora Carzonan, Clerk of the Board

by: 

**APPROVAL OF THE AGREEMENT BETWEEN
THE HOOPA VALLEY TRIBE, THE COUNTY OF
HUMBOLDT, AND THE SHERIFF OF HUMBOLDT
COUNTY FOR THE DEPUTIZATION OF QUALIFIED
HOOPA VALLEY TRIBAL POLICE OFFICERS**

-2-

For Meeting of: October 14, 2003

DISCUSSION: (Cont'd)

Since approximately 1990, the County of Humboldt, the Sheriff of Humboldt County and the Hoopa Valley Tribe have utilized cooperative agreements between the County of Humboldt, the elected Sheriff and the Hoopa Valley Tribe for the enhancement of public safety services within the boundaries of the Hoopa Valley Indian Reservation. These cooperative agreements have been desired by all parties in order to increase law enforcement resources on the Hoopa Valley Indian Reservation and to enhance the ability to appropriately enforce state laws pursuant to Public Law 280. The history of these cooperative agreements has shown themselves to be beneficial to all of the participating parties.

FINANCIAL IMPACT:

The agreement allows Tribal Officers to enforce state law on the Hoopa Reservation strengthening law enforcement capabilities without additional cost to the County.

OTHER AGENCY INVOLVEMENT: Hoopa Valley Tribe

Humboldt County District Attorney & Tribal Governments Roundtable

*Comprised of Humboldt County District Attorney, Humboldt County D.A. Victim Witness,
California Attorney General's Office,
California Emergency Management Agency, and Center for Indian Law & Economic Justice, Inc.
&
Bear River Band of Rohnerville Rancheria, Big Lagoon Rancheria, Blue Lake Rancheria, Hoopa Valley Tribe,
Karuk Tribe, Trinidad Rancheria, Wiyot Tribe, and the Yurok Tribe.*

In Appreciation of Your Commitment

*The Humboldt County District Attorney and Local Tribal Governments
respectfully thanks you for your support and presence at the formal adoption and signing of the
Memorandum of Understanding.*

*This Memorandum of Understanding evidences the willingness and commitment of the signers
to work towards mutual goals and foster stronger communication between the Humboldt County
District Attorney's Office and Tribal Governments.*

Humboldt County District Attorney & Tribal Governments Roundtable Memorandum of Understanding

Formal Adoption

June 17, 2009



Wiyot Tribe



Blue Lake Rancheria



Trinidad Rancheria



Karuk Tribe



Big Lagoon Rancheria



Hoopa Valley Tribe



Bear River Band of Rohnerville Rancheria



Rohnerville Rancheria

Humboldt County District Attorney and Tribal Governments Roundtable Memorandum of Understanding

This Memorandum of Understanding (MOU) evidences the willingness and commitment of the signers to work toward mutual goals and foster stronger communication between the Humboldt County District Attorney's Office and Tribal Governments.

Mission

The mission of the Humboldt County District Attorney and Tribal Governments' Roundtable is to create and increase communications between sovereign Tribal Governments and the Humboldt County District Attorney's Office. The Roundtable fosters education of our mutual constituencies to meet our needs by multi-level training, in-services and presentations. The Roundtable is committed to ensuring a mechanism is employed to address concerns or issues between our entities.

Purpose and Scope

The Humboldt County District Attorney's Office and the sovereign Tribal Governments are forming a collaboration to address the mutual needs of our entities as we serve our constituents. Each participating organization is responsible for its own expenses related to this MOU. There will not be an exchange of funds between the parties for tasks associated with this MOU, except shared expenses as agreed to by members.

Responsibilities

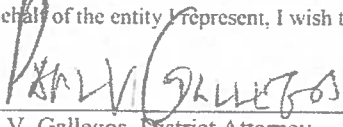
Each signing entity will appoint a person to serve as the official contact and coordinate the activities of each entity in carrying out this MOU. All parties will work together on public education efforts, and will attend a monthly meeting.

Terms of Understanding

The term of this Memorandum of Understanding is for a period of five years from the effective date of this agreement, and may be extended upon written mutual agreement. It shall be reviewed at least annually to ensure that it is fulfilling its purpose and to make any necessary revisions.

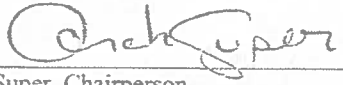
Authorization:

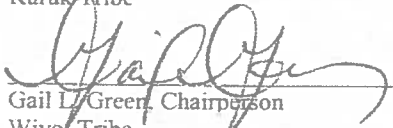
On behalf of the entity I represent, I wish to sign this Memorandum of Understanding and contribute to its further development.

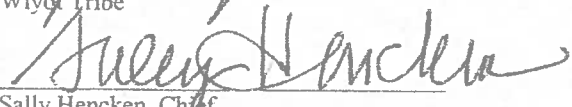

Paul V. Gallegos, District Attorney
County of Humboldt


Leonard Bowman, Chairperson,
Bear River Band of Rohnerville Rancheria

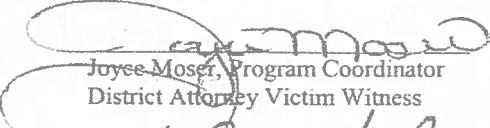

Claudia Brundin, Chairperson
Blue Lake Rancheria



Arch Super, Chairperson
Karuk Tribe

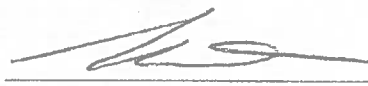

Gail L. Green, Chairperson
Wiyot Tribe



Sally Hencken, Chief
Victim Services Division
California Emergency Management Agency

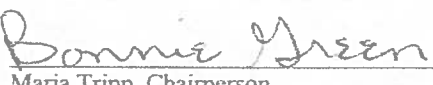

Keith Taylor, Executive Director
Center for Indian Law & Economic Justice, Inc.


Joyce Moser, Program Coordinator
District Attorney Victim Witness


Virgil Moorhead, Chairperson
Big Lagoon Rancheria


Clifford L. Marshall, Chairperson
Hoopa Valley Tribe


Garth Sundberg, Chairperson
Trinidad Rancheria


Maria Tripp, Chairperson
Yurok Tribe


Olin Jones, Director
Office of Native American Affairs,
California Attorney General's Office

Presidential Documents

Title 3—

Executive Order 13175 of November 6, 2000

The President

Consultation and Coordination With Indian Tribal Governments

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. *Definitions.* For purposes of this order:

(a) "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. *Fundamental Principles.* In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. *Policymaking Criteria.* In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. *Increasing Flexibility for Indian Tribal Waivers.*

(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.

(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. *Accountability.*

(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. *Independent Agencies.* Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 9. *General Provisions.* (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

Future of P.L. 280: Repeal or Retrocession

Presenter: Joe Myers / The National Indian Justice Center

Description: This workshop examined all the issues relevant to Native women involved in D/V cases in P.L. 280 states.

Commentary:

President Nixon repudiated “Indian Termination” in 1971 and in 1975 congress enacted the Indian Self-Determination and Education Assistance Act of 1975. These two steps in federal Indian policy shut the door on “Indian Termination” and called for the self-determination of the federally recognized tribes. Why then is P.L. 280 still the law since it was merely trigger legislation to put in motion “Indian Termination.” If Indian termination had been successful P.L. 280 would be obsolete today because there would be no federally recognized tribes. But such is not the case.

In this era of self-determination for Indian tribes it should follow that P.L. 280 should possibly be repealed. Why should there be a need for concurrent jurisdiction between the states and the tribes in P.L. 280 should possibly be repealed. Why should there be a need for concurrent jurisdiction between the states and the tribes in P.L. 280 states when there is no shared jurisdiction in non-P.L. 280 states? The opponents of repealing P.L. 280 argue that there would be no funding for resuming the federal/ tribal relationship. P.L. 280 tribes receive COPS grants, BIA funding, HUD funding, and funds for developing tribal courts. There really is no viable argument for not repealing P.L. 280. That is no longer the case.

Retrocession, (the process of getting the P.L. 280 to remove itself from the current criminal jurisdiction with the tribe there by having the tribe return to the federal/tribal relationship) may not work in a P.L. 280 state like California where there are 109 separate tribal groups that are federally recognized, utter chaos! Today P.L. 280 states have a financial interest in remaining P.L. 280 because of their interest in Indian casino gambling. The states have leverage in the Indian gaming compacting process as P.L. 280 states.



Public Law 280

Joseph Myers
Executive Director
National Indian Justice Center



Civil v. Criminal Jurisdiction

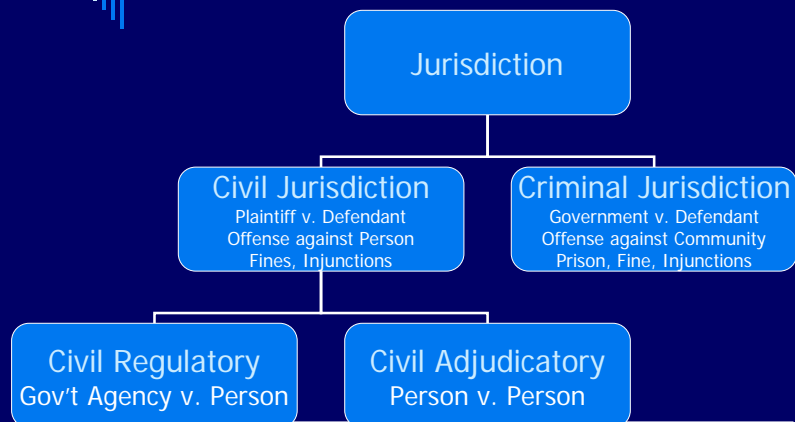
□ Civil Jurisdiction

- People v. People
- Plaintiff v. Defendant
- Kramer v. Kramer
- Estate of Nicole B. Simpson v. O.J. Simpson
- Person commits crime against another person
- Fine, Injunctions

□ Criminal Jurisdiction

- Government v. Perpetrator
- State (U.S.) v. Defendant
- U.S. v. Kagama
- The People v. O.J. Simpson
- Person commits crime against the community
- Prison, Fine, Injunctions

Types of Jurisdiction



Assertion of Jurisdiction

- To establish valid jurisdiction over a case, the court must establish:
 - Personal Jurisdiction
 - Persons or parties to the case are subject to the personal jurisdiction of the tribal court by presence, agreement or statute.
 - Subject Matter Jurisdiction
 - Dispute is addressed by existing tribal law.
 - Territorial or *In Rem* Jurisdiction
 - The property, if any, related to the dispute is within the jurisdiction of the tribe.



TERMINATION

"In view of the historic policy of Congress favoring freedom for the Indians, we may well expect future Congresses to continue to endorse the principle that 'as rapidly as possible' we should end the status of Indians as wards of the Government and grant them all the rights and prerogatives pertaining to American citizenship.

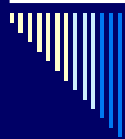
. . .



TERMINATION

"With the aim of 'equality before the law' in mind our course should rightly be no other. Firm and constant consideration for those of Indian ancestry should lead us all to work diligently and carefully for the full realization of their national citizenship with all other Americans. Following in the footsteps of the Emancipation Proclamation of 94 years ago, I see the following words emblazoned in letters of fire above the heads of the Indians - "These people shall be free!"

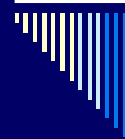
*-Senator Arthur V. Watkins (R-Utah)
Chairman, Indian Affairs Subcommittee*



House Concurrent Resolution 108

(Introduced by Rep. Harrison on June 9, 1953)

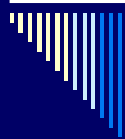
- Whereas it is the policy of Congress, as rapidly as possible to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, and to grant them all the rights and prerogatives pertaining to American citizenship; and



House Concurrent Resolution 108

(Introduced by Rep. Harrison on June 9, 1953)

- Whereas the Indians within the territorial limits of the United States should assume their full responsibilities as American citizens:

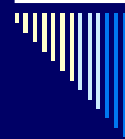


House Concurrent Resolution 108

(Introduced by Rep. Harrison on June 9, 1953)

Now, therefore be it

- Resolved by the House of Representatives (the Senate concurring), That it is declared to be the sense of Congress that, at the earliest possible time, all of the Indian tribes and the individual members thereof located within the States of California, Florida, New York, and Texas, and all of the following named Indian tribes and individual members thereof, should be freed from Federal supervision and control and from all disabilities and limitations specially applicable to Indians.



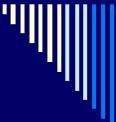
In response to a question concerning whether a Congressional bill carrying out HR 108 would violate Indian treaty rights, Watkins responded:

- It is like the treaties with Europe. They can be renounced at any time. * * * We have arrived at the point where we do not recognize now within the confines of the United States any foreign nations. You now have become citizens of the one nation. Ordinarily the United States does not enter into treaties * * * between any of its citizens and the Federal Government. * * * So it is doubtful now that from here on treaties are going to be recognized where the Indians themselves have gone to the point where they have accepted citizenship in the United States and have taken advantage of its opportunities. So that that question of treaties, I think is going to largely disappear.*



**28 U.S.C. § 1360. State civil jurisdiction in actions to which Indians are parties.
(P.L. 280 Civil Provisions)**

- (a) Each of the States or Territories listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory.



**28 U.S.C. § 1360. State civil jurisdiction in actions to which Indians are parties.
(P.L. 280 Civil Provisions)**

<u>State or Territory of</u>	<u>Indian Country Affected</u>
Alaska	All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State



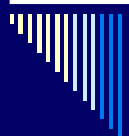
28 U.S.C. § 1360. State civil jurisdiction in actions to which Indians are parties.
(P.L. 280 Civil Provisions)

- (b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.



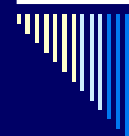
28 U.S.C. § 1360. State civil jurisdiction in actions to which Indians are parties.
(P.L. 280 Civil Provisions)

- (c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.



§ 1162. State jurisdiction over offenses committed by or against Indians in the Indian country:
(Public Law 280: Criminal Provisions)

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:



§ 1162. State jurisdiction over offenses committed by or against Indians in the Indian country:
(Public Law 280: Criminal Provisions)

State or Territory of

Indian Country Affected

Alaska

All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community

California

All Indian country within the State

Minnesota

All Indian country within the State, except the Red Lake Reservation

Nebraska

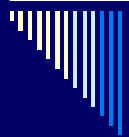
All Indian country within the State

Oregon

All Indian country within the State, except the Warm Springs Reservation

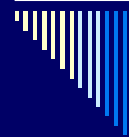
Wisconsin

All Indian country within the State



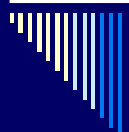
§ 1162. State jurisdiction over offenses committed by or against Indians in the Indian country:
(Public Law 280: Criminal Provisions)

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.



§ 1162. State jurisdiction over offenses committed by or against Indians in the Indian country:
(Public Law 280: Criminal Provisions)

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.



Indian Country Crimes Act (General Crimes Act)

(18 U.S.C.A. § 1152)

□ § 1152. *Laws governing*

- Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.
- This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.



Major Crimes Act

18 U.S.C. § 1153

§ 1153. *Offenses committed within Indian country*

- (a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.



Major Crimes Act

18 U.S.C. § 1153

- **§ 1153. Offenses committed within Indian country**
- (b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

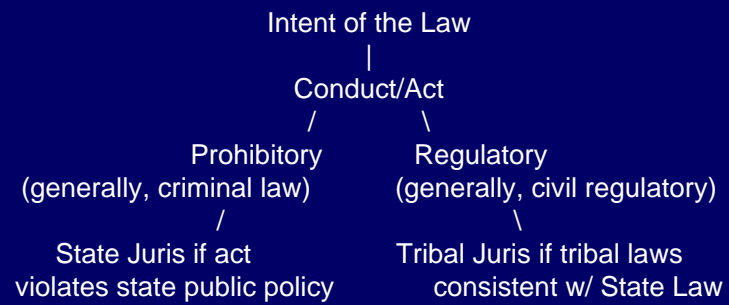


Indian Civil Rights Act

- Applies to "Any Person"
- Variations between ICRA and Bill of Rights:
 - U.S. Constitution guarantees a freedom from the establishment of religion; ICRA does not.
 - U.S. Constitution guarantees the right to bear arms and to quarter troops in times of war.
 - ICRA provides for assistance of counsel during criminal case AT THE EXPENSE OF THE DEF.
 - Limitation on Sentence Imposed
 - Minimum Number of Jury Members

Civil Regulatory v. Criminal Prohibitory

What sort of jurisdiction may the States assert?



PL 83-280

PUBLIC LAW 280

CHAPTER 505

AN ACT

To confer jurisdiction on the State of California, Minnesota, Nebraska, Oregon, and Wisconsin, with respect to criminal offenses and civil causes of action committed or arising on Indian reservation within such States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the *United States of America in Congress assembled*. That chapter 53 of title 18, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1151 of such title the following new item:

“1162. State jurisdiction over offenses committed by or against Indians in the Indian country”

SEC 2. Title 18, United States Code, is hereby amended by inserting in chapter 53 thereof immediately after section 1161 a new section, to be designated as section 1162, as follows:

“§ 1162 STATE JURISDICTION OVER OFFENSES COMMITTED BY OR AGAINST INDIANS IN THE INDIAN COUNTRY

“(a) Each of the States listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over offenses committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country as they have elsewhere within the State:

“State of	Indian country affected
California -----	All Indian country within the State
Minnesota -----	All Indian country within the State, except the Red Lake Reservation
Nebraska -----	All Indian country within the State
Oregon -----	All Indian country within the State, except the Warm Springs Reservation
Wisconsin -----	All Indian country within the State, except the Menominee Reservation

“(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or

community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto: or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

“(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section.”

SEC. 3. Chapter 85 of title 28, United States Code. is hereby amended by inserting at the end of the chapter analysis preceding section 1331 of such title the following new item:

“1360. State civil jurisdiction in actions to which Indians are parties”

SEC. 4. Title 28, United States Code, is hereby amended by inserting in chapter 85 thereof immediately after section 1359 a new section, to be designated as section 1360, as follows:

“§ 1360. STATE CIVIL JURISDICTION IN ACTIONS T O WHICH INDIANS
ARE PARTIES

“(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

State of	Indian country affected
California -----	All Indian country within the State
Minnesota -----	All Indian country within the State, except the Red Lake Reservation
Nebraska -----	All Indian country within the State
Oregon -----	All Indian country within the State, except the Warm Springs Reservation
Wisconsin ----- Reservation	All Indian country within the State, except the Menominee

“(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or

personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

“(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.”

SEC. 5. Section 1 of the Act of October 5, 1949(63 Stat. 705, ch. 604), is hereby repealed, but such repeal shall not affect any proceedings heretofore instituted under that section.

SEC. 6. Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: Provided, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be.

SEC. 7 The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or other States civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof.

Approved, August 15, 1953.

Appendix A PL 83-280

PUBLIC LAW 280

CHAPTER 505

AN ACT

To confer jurisdiction on the State of California, Minnesota, Nebraska, Oregon, and Wisconsin, with respect to criminal offenses and civil causes of action committed or arising on Indian reservation within such States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the *United States of America in Congress assembled*. That chapter 53 of title 18, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1151 of such title the following new item:

“1162. State jurisdiction over offenses committed by or against Indians in the Indian country”

SEC 2. Title 18, United States Code, is hereby amended by inserting in chapter 53 thereof immediately after section 1161 a new section, to be designated as section 1162, as follows:

“§ 1162 STATE JURISDICTION OVER OFFENSES COMMITTED BY OR AGAINST INDIANS IN THE INDIAN COUNTRY

“(a) Each of the States listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over offenses committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country as they have elsewhere within the State:

“State of	Indian country affected
California -----	All Indian country within the State
Minnesota -----	All Indian country within the State, except the Red Lake Reservation
Nebraska -----	All Indian country within the State
Oregon -----	All Indian country within the State, except the Warm Springs Reservation
Wisconsin -----	All Indian country within the State, except the Menominee Reservation

“(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

“(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section.”

SEC. 3. Chapter 85 of title 28, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1331 of such title the following new item:

“1360. State civil jurisdiction in actions to which Indians are parties”

SEC. 4. Title 28, United States Code, is hereby amended by inserting in chapter 85 thereof immediately after section 1359 a new section, to be designated as section 1360, as follows:

“§ 1360. STATE CIVIL JURISDICTION IN ACTIONS TO WHICH INDIANS ARE PARTIES

“(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

State of	Indian country affected
California -----	All Indian country within the State
Minnesota -----	All Indian country within the State, except the Red Lake Reservation
Nebraska -----	All Indian country within the State
Oregon -----	All Indian country within the State, except the Warm Springs Reservation
Wisconsin -----	All Indian country within the State, except the Menominee Reservation

“(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

“(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

SEC. 5. Section 1 of the Act of October 5, 1949(63 Stat. 705, ch. 604), is hereby repealed, but such repeal shall not affect any proceedings heretofore instituted under that section.

SEC. 6. Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: Provided, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be.

SEC. 7 The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or other States civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof.

Approved, August 15, 1953.

Institute for the Department of Indian Law

I. Public Law 280: Selected Statutes, Cases, and Other Materials.

A. Provisions of the 1953 Law:

1. 18 U.S.C. § 1162. Granted criminal jurisdiction to the State over offenses committed by or against Indians in the Indian Country in the states of Alaska (added in 1958), California, Minnesota, Nebraska, Oregon, and Wisconsin.

2. 28 U.S.C. § 1360. Granted civil jurisdiction to the State over civil cases between Indians or in which Indians are parties which arise in Indian Country in the States of Alaska (added in 1958), California, Minnesota, Nebraska, Oregon, and Wisconsin.

NOTE: Several other states, including Washington, Arizona, and Nevada, have assumed partial jurisdiction over Indian Country under PL 280.

B. Amendment of PL 280 in the 1968 Indian Civil Rights Act: 25 U.S.C. § 1323. Authorized the United States to accept a retrocession of "all or any measure of the criminal or civil jurisdiction" acquired by States under PL 280.

Note: Tribes cannot initiate retrocession of State jurisdiction.

C. Legal Authority Supporting Tribal Jurisdiction.

1. Federal Statutes.

a. Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1911 *et seq.*: Grants tribal courts exclusive jurisdiction over custody of Indian children domiciled on the reservation and over tribal wards living off of the reservation in non-divorce cases. § 1911(a). Includes provision for transfer of custody proceedings involving Indian children not domiciled on the reservation from state court to the child's tribe where neither parent objects. § 1911(b).

b. Indian Civil Rights Act (ICRA), 25 U.S.C. §§ 1301 *et seq.*: Amended PL 280 to allow state retrocession of jurisdiction and requires tribal consent before a new state can assume jurisdiction in Indian Country. Contains the "Indian Bill of Rights" (§ 1302) and habeas corpus guarantees (§ 1303) with which tribes must comply. Tribal sanctions limited to \$5,000 fines and one year imprisonment for any one offense. § 1302(7).

c. Indian Tribal Justice Act, 25 U.S.C. § 3601: Contains a broad statement by the Congress recognizing the importance and legitimacy of tribal justice systems. Note: Authorization for appropriations to assist the development of tribal justice systems under this Act is contained in 25 U.S.C. § 3621.¹

2. Selected Federal Environmental Statutes Conferring Tribal Jurisdiction:

- a. Clean Water Act (CWA), 33 U.S.C. § 1377.
- b. Clean Air Act (CAA), 42 U.S.C. § 7601(d), § 7474(c) & (e).
- c. Safe Drinking Water Act (SDWA), 42 U.S.C. §300j-11.
- d. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA/Superfund), 42 U.S.C. §9604(d), § 9607(a)(4)(A).

D. Legal Authority Recognizing Concurrent State/Tribal Jurisdiction in PL 280 States:

1. Case Law Upholding Tribal Jurisdiction in PL 280 States:

- a. *Native Village of Venetie IRA Council, et al. v. Alaska*, 944 F.2d 548 (9th Cir. 1991): neither PL 280 or section § 1911(a) of the Indian Child Welfare Act divest tribes from exercising concurrent jurisdiction with states over child custody determinations.
- b. *Walker v. Rushing*, 898 F.2d 672 (8th Cir. 1990): tribe in PL 280 state holds concurrent jurisdiction with state to prosecute tribal member for crimes committed within the exterior bounds of the reservation.
- c. *Washington v. Schmuck*, 121 Wash.2d 373, 850 P.2d 1332 (1993): PL 280 did not divest tribe of authority to stop and detain non-Indian motorist allegedly violating state and tribal law while traveling on reservation roads.

¹ As of October 1994 these funds have not been appropriated.

2. Case Law Restricting State Regulatory Jurisdiction over Tribes in PL 280 States:

- a. *Bryan v. Itasca County*, 426 U.S. 373, 96 S.Ct. 2102 (1976): PL 280 did not confer on states the power to tax non-trust Indian property located within Indian Country.
- b. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 107 S.Ct. 1083 (1987): PL 280 states cannot apply and enforce non-criminal gambling regulatory laws within Indian Country.
- c. *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655 (9th Cir. 1975): PL 280 did not grant states jurisdiction to apply zoning regulations to Indian trust property. PL 280's grant of jurisdiction does not extend to local ordinances and laws.

3. Case Law Rejecting State Jurisdiction in Disputes Involving Indian Trust Property:

- a. *All Mission Indian Housing Authority v. Silvas*, 680 F.Supp. 330 (C.D. Cal. 1987): State has no jurisdiction under PL 280 over unlawful detainer action arising on Indian trust property and state law does not apply.
- b. *Boisclair v. Superior Court*, 51 Cal.3d 1140, 276 Cal.Rptr. 62, 801 P.2d 305 (1990): State courts have no jurisdiction under PL 280 in cases involving disputes over Indian trust property (state court lacked jurisdiction in an action brought to determine whether a road through Indian trust land was a public road).

4. PL 280 State Attorney General Opinions:

- a. Wisconsin - - jurisdictional questions relating to implementation of the Indian Child Welfare Act: "For nonregulatory proceedings, such as voluntary termination of parental rights, the tribal courts, and state courts pursuant to Pub. L. No. 280, have concurrent jurisdiction." 70 Op. Att'y Gen. Wisc. 237, 243 (1981); 1981 WL 157271 (Wash. A.G.).
- b. Nebraska - - questions regarding retrocession of the Winnebago Reservation: "It has generally been held . . . that "[U]nder Public Law 280 the tribe retained substantial inherent tribal authority over civil matters arising in Indian country. While some of this tribal

jurisdiction and authority may have been concurrent with state jurisdiction (i.e., existing together with it), or while the Tribe may have chosen not to exercise all of its authority and jurisdiction, nonetheless that tribal jurisdiction and authority was always there." Nebraska Att'y Gen. Opinion No. 48, Opinion Letter from Robert M. Spire, Attorney General (Charles E. Lowe, Ass't Att'y General) to State Senator James E. Goll (March 28, 1985); 1985 WL 168524 (Neb.A.G.).

Implementing Police Programs and Cooperative Efforts & Police Protection and Intervention for Domestic Violence Victims

Presenter: Chief Denke / Sycuan Tribal Police

Presenter: Ted Quasula / Police Consultant

Presenter: Ralph Maize / Police Consultant

Description: Tribal law for many tribes in P.L. 280 states does not exist yet. This workshop examined the jurisdictional maze and offered sound advice on how to protect Native women from domestic violence through tribal law in P.L. 280 states. Because Alaska, California, Oregon, Wisconsin and Minnesota today remain the mandatory Public Law 280 states, primary police services for crimes committed (on reservations) are provided by state and county agencies. Presenters also dealt with the multi-dimensional issues created by the jurisdictional anomaly of P.L. 280. Who does what, where and when? P.L. 280 is a federal unfunded mandate that may have jeopardized the lives of many (on reservation) crimes victims.

Commentary:

We have joined these two workshops for comment. The workshop presented by Chief Denke focused on developing relationships for the Sycuan Tribal Community which is located in the suburbs of the city of San Diego, a location dissimilar to most tribal groups in California. This is a P.L. 280 state that possesses a great diversity in Indian lands and Indian population to those lands. Sycuan has a small population of Indians and a small reservation with a lucrative Indian casino in the suburbs just east of San Diego.

The leadership of the Sycuan and Chief of Police Denke are engaged in an effort to influence the officials of surrounding jurisdictions to cooperate with Sycuan to provide services to tribal victims of domestic violence. Unlike tribes located in remote, rural areas, the availability of services is not an issue. This calls for cooperative ventures.

If the tribes in P.L. 280 states are hesitant about repealing P.L. 280 and want to maintain the status quo that means concurrent criminal jurisdiction would remain unless a tribe seeks to engage in the retrocession process that requires the cooperation of the state. The Oliphant decision removed criminal jurisdiction over non-Indians from tribal courts; therefore only the state court can exercise criminal jurisdiction over non-Indians in criminal domestic violence cases that occur on Indian lands. If there is a positive relationship between the county and the tribe, prosecution of non-Indians in D/V cases will proceed. If that relationship is negative, there will be no prosecutor. Federal prosecution of these cases is highly remote in P.L. 280 states.

The jurisdiction anomaly will persist unless tribes come together and fashion a meaningful jurisdictional template for the future. Until this occurs, D/V victims will continue to be further victimized by an outdated jurisdictional backdrop.

Mr. Quasula and Mr. Maize are two law enforcement experts who know the dynamics of the communities of Indian country. Those dynamics change from one reservation to another, from one state to another, and from one tribe's priority to another. It is a proven fact that violence in the home, in the schools, and throughout the various tribal communities does exist. But, the question remains as to the extent of domestic violence.

Who are the perpetrators? What are the profiles of the victims? Are there any reservations where there are no D/V problems? Is the collected data entered into a “one size fits all” format? Where does one go to retrieve the answers to these questions? Researchers need to interview individuals like Quasula and Maize to come up with relevant methods to eradicate D/V from Indian Country.

**MEMORANDUM OF AGREEMENT
BETWEEN
THE MICHIGAN DEPARTMENT OF STATE POLICE
AND**

1. Parties

This Memorandum of Agreement (MOA) is entered into by and for the Michigan Department of State Police (MSP) and (Tribe).

The MSP is the executive branch government agency of the State of Michigan charged with maintaining the Michigan Sex Offender Registry (SOR), a database containing information regarding persons convicted of certain criminal offenses. The Tribe is an Indian tribe recognized under the laws of the United States and located within the political boundaries of the State of Michigan. The MSP and Tribe are hereinafter collectively referred to as "the parties."

Both parties are "jurisdictions" as that term is defined in the Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Child Protection and Safety Act of 2006.

2. Purpose

The purpose of this MOA is to set forth the conditions and responsibilities of the parties concerning the use of the Michigan Sex Offender Registry by the Tribe in order to facilitate satisfying the Tribe's responsibilities under the SORNA. The Tribe has notified the appropriate office of the United States Department of Justice that the Tribe intends to delegate to the State of Michigan its SORNA responsibilities concerning the administration and maintenance of a sex offender database, public sex offender registry website, and community and law enforcement notification.

3. Subject of Agreement

The subject of this MOA is information contained in public and non-public records concerning convicted sex offenders collected and maintained in the SOR by the MSP as provided by the Tribe. Such information includes personal identifying information, offense data including descriptions and codes, criminal history information, photographs, and other offender-related information required by law and is hereinafter collectively referred to as "offender data."

4. Responsibilities, Rights, and Limitations - the MSP

- (a) The MSP will maintain the SOR, including enhancements or upgrades as deemed necessary by the MSP.
- (b) The MSP will maintain the following in conjunction with the SOR: a system of e-mail notification to third parties requesting offender data; a website accessible by the public and containing offender data; and a website containing or linking to pertinent safety, education, and corrections information. The website containing offender data shall include appropriate permissible use and harassment warnings.
- (c) The MSP will include in the SOR offender data supplied by the Tribe in accordance with this MOA.
- (d) The MSP will electronically store offender data and supporting registration documents submitted by the Tribe.

6. No Indemnification

The parties shall not indemnify each other for any purpose arising out of the operation of this MOA; the parties agree to assume their own costs of litigation that may arise out of the operation of this MOA, whether the litigation is filed or joined by either party or a third party.

7. Notice of Claims

The parties agree to notify the other, in writing, of any claim, of which a party has knowledge, asserted against either party or their employees, officers, agents, or directors when such claim purports to arise out of the subject of this MOA. Such notification must be made within five business days of discovery of the claim.

8. Dispute Resolution

It is the intent of the parties that disputes arising out of the operation of this MOA be resolved informally. The parties agree to make good faith efforts to reach informal resolution for at least sixty days before terminating this MOA or commencing legal action.

9. Amendment

This MOA may not be amended except by written instrument executed by both parties.

10. Severability

If any portion of this MOA is held by a court having jurisdiction to be unlawful, unenforceable, or void, the remaining provisions shall remain in full force and effect.

11. Assignment

This MOA may not be assigned, delegated, or otherwise transferred by the parties, nor may any right, duty, or obligation under this MOA be assigned, delegated, or transferred, unless otherwise provided for in this MOA.

12. Entire Agreement

This MOA constitutes the entire agreement between the parties and it supersedes all prior agreements and understandings between them with regard to the subject of this MOA.

13. Term of Agreement

This MOA shall be effective for one-year from the effective date, and shall automatically renew for consecutive one-year terms unless terminated by either party. The parties agree that in the event a party desires a change in the terms of the MOA without terminating it, they shall provide the other party written notice at least sixty days prior to the end of a term.

14. Termination of Agreement

- (a) Either party may unilaterally terminate this agreement for any reason and at any time. Such termination is effective ninety days after the non-terminating party receives written notice of intent to terminate, unless the parties mutually agree to a different termination date. The parties agree not to initiate termination under this subsection until such time as the requirements for informal resolution in section 8 of this MOA have been met.

Reservation Violence Prevention

Presenter: Joe Myers / The National Indian Justice Center

Presenter: William Johnson / Umatilla Tribal Court

Description: Violence can no longer be viewed as a law enforcement problem. It permeates our communities – in the home, workplace, the streets, and the schools. We must define the issues of violence and seek to address violence as a public health problem that is preventable if we can motivate and mobilize our communities to respond. This workshop will examine the multiple faces of violence and suggest preventative measures.

Commentary:

Among other issues, this workshop examines the notion of dealing with the historic trauma inflicted upon Indians. Because the trauma was not discussed the grieving was incomplete and lost in intergenerational time sequences. Many Native Americans are angry and have no answers when questioned about the roots of those feelings of anger.

By the time the Indian reservation system was implemented by federal policy in the early 1800's, violence had become routine to Indian communities across this continent as Indian tribes faced the emergence of the westward expansion of white settlement of the new nation, the United States of America.

There was no federal interest in including Indians in the settling of the West. In face the reservation system amounted to exclusion of Indians from participating in the new American society. The federal policy interest was to wrench the West from the clutches of any tribal control. Hence, there were peace treaties in which tribal leaders ceded enormous tracts of land for life on the reservations where they were initially guarded by the US Army and told that they would be able to live there in peace. Historically, there were enormous complexities that surrounded the establishment and maintenance of Indian reservations. Treaties were signed, executive orders made, and congressional statutes passed that declared certain lands as Indian territories or Indian country. In most instances tribal leaders had little choice but to accept the reservation system. Rejection of the reservation system meant certain death for tribal groups.

Today, Indian territories are reduced versions of the original reservations. The General Allotment Act of 1887 reduced Indian lands by 90 million acres over a 40-year period. This federal statute also plunged Indian reservations into the depths of educational, emotional, financial, governmental and social poverty. Complete recovery has yet to occur in Indian country from the devastating results of the allotment policy.

With the presence of military guards and the coveting of Indian lands by white settlers and entrepreneurs the seeds of violence were planted early in Indian territories (reservations). Although the sources of violence have changed over the years, the intensity of violence has remained high with no sign of decline.

Violence is much more than a police problem. The community must step forward. Violence is a public health issue and a public safety problem. Violence is not inevitable, it can be eliminated. Identify the problem and its roots. Implement a comprehensive plan of eradication and stay the course. Violence defined:

The intentional use of physical force or power threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation.

Tribes should post this definition in all public places and begin work on addressing rez violence.



REZ VIOLENCE NIJC

1-800-966-0662



nijc@aol.com

1



FEDERAL POLICY



Indian reservations created
to be places of violence by
federal policy



2



Questions



- What are the roles of individuals, families, communities and tribal governments?
- Policy Problem? Whose Policy?
- Police problem? Courts?
- Schools?
- Acts of violence have no boundaries in the community.

3



STATISTICS



- 4,400 people die per day from violence! Or 1.6 million per year
- Serious injuries are at much higher rates of the 1.6 million deaths.
- Half are attributed to suicides, 1/3 to homicides and 1/5 to war and conflict
- Poor people bear the heaviest burden
- Violence has impact on health services
- Victim services are inadequate in Indian country

4



VIOLENCE DEFINED



- The intentional use of the physical force or power threatened or actual against oneself, another person or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation.

5



THE NEED



Violence is not only police problem. It is a public health problem. To address it effectively a community wide partnership is required



6



Typology of Violence



- Self-directed –suicidal behavior and self abuse
- Interpersonal- family/partner, community
- Collective- social, political, economic
- Nature of violence – physical, sexual, psychological, deprivation or neglect

7



NON FATAL DATA NEEDED



- Health data on disease, injuries and other health conditions;
- Self-reported data on attitudes, beliefs, behaviors, cultural practices, victimization and exposure to violence;
- Community data on population characteristics and levels of income, education and employment:

8



CONTINUED - NON FATAL DATA



- Crime data on violent events and attendees
- Data on cost of treatment, social services and prevention activities;
- Policy and legislative data.

9



PREVENTION MEASURES



- Successful if comprehensive and scientifically based
- Prevention measures introduced early and sustained over time are effective
- Individual, relationship approaches, community based and societal approaches
- Violence is not inevitable

10



PROBLEMS – CRIMINAL JUSTICE INDIAN COUNTRY



- The jurisdictional maze – Ex parte Crow Dog, Oliphant and other cases
- Government malfunctions – separation of powers, IRA constitutions.
- Indian Civil Rights Act of 1968

11



INDICATORS OF VIOLENCE



- Report – American Indians and crime
- Overwhelming statistics presented
- Domestic and youth violence on the rise in Indian country.

12



SELF – INFLICTED VIOLENCE



- Self – mutilation
- Attempted suicide
- Suicide

13



INTERPERSONAL VIOLENCE



- In the home
- Mandatory arrest statutes
- Judicial procedures
- Probation activities
- Outside the home

14



COLLECTIVE VIOLENCE



- Gang wars
- Violence incident to drug trafficking
- Historic rez violence – us military force

15



INSTITUTIONAL VIOLENCE



- Police
- Tribal Courts – role
- Tribal Councils – role
- County, state, and federal officials

16



VICTIMS SERVICES



- Assistance programs resources
- Indian country programs

17



COMMUNITY ACTION



- Changing norms
- Community based interventions
- Improved response, investigation and prosecution
- Code revisions
- Safe houses
- Treatment programs

18



PREVENTION INTERVENTION AND TREATMENT ISSUES



- Importance
- Protocol Development

Domestic Violence: Courts and Resources for Victims in P.L. 280 States

Presenter: Jolanda Marshall / Niwhongh xw E:na:wh Stop the Violence Coalition

Presenter: Germaine Omish Guachena

Description: The work of the coalitions, state resources, and national programs were highlighted in this workshop. New, innovative programs were reviewed that addressed the need to pay attention to the voices of Native Women who prefer shelters geared toward their cultural needs. Presenters also examined what state and tribal courts offer and do not offer to domestic violence victims.

Commentary:

The issue of women (family) shelters providing for cultural needs is very complex. Many Indians become mothers as teens and have little or no education. They often blame themselves for their spouse becoming violent with them and their children. Usually, they have no resources and often have relatives who blame them for the domestic violence. Many times they are poor, obese, and introverted. They feel that white women are from another world of which the battered Indian women cannot and does not want to belong.

These are social impediments not cultural needs. Many domestic violence victims do not speak their own tribal language, nor are they comprehensively schooled in traditional ceremonies, rites, or philosophies.

They often have critical self-esteem problems FAS/FAE issues and may suffer from addictions. They may want a shelter close to home so that they may have the opportunity to return to the perpetrator. Often this is a particular profile of the victim who is in the process of leaving and may not want to leave the abusive relationship.

The judge's state or tribal courts usually rely on the recommendations of others in resolving these cases. These individuals' stereotypes, points of view, and the repeating victim in the system make resolution difficult. Each case may be unique. What is needed is professional care: tribal spiritual leader and counselor or a psychologist or a psychiatrist. Although the shelter provider or coalition leader are on the frontlines, these other "professionals" may have an effective influence on what the victim will do with her future and that of her family.

Presenter Germaine Omish-Guachena, Executive Director

Strong Hearted Women Coalition

- Have shelters but not particularly for Native Women so Tribes formed a Coalition in 2005 made up of a consortium of 9 for 18 tribes. Rincon, Mesa Grande, Pala, Pauma, San Pasqual, La Jolla

Victim compensation (Peace between Partners Program) & Tribal Family Services Program

- Rent
- Utility bills
- Childcare, food, & clothing

Programs offered

- Batterers group – 52 week non-violence group
- Protecting family – education classes on DV/SA & stalking
- Emergency transportation
- TRO assistance
- Emergency shelter & temporary shelter
- Court advocacy
- Sexual assault response team & counseling 2 wks women and children in shelters

Also works with

1) North County Family Violence Prevention Center

- Have a deputy officer & lawyer to help with restraining orders and work with other agencies & organizations to provide training for individuals & community.

2) Women's Resource Center

- A Shelter
- Women are referred & transported if within north county tribes
- Depends where incident happens they are referred to nearest courtroom.

<http://www.womenspiritcoalition.org>

Strongheartedwomen@yahoo.com

(760) 644-4781

PO Box 2488

Valley Center, CA 92082

San Diego County Domestic Violence Hotline 1 (888)-DVLINKS / (888) 385-4657

Presenter: Jolanda Ingram Marshall BA. JD, Exec. Director

Stop the Violence Coalition, since 2002

- 501 c(3) non-profit
- Hoopa Valley Tribe Business & Commerce Code
- 7 Board of Directors

Currently 4 grants provided through Federal Office on Violence Against Women

- Grant to Indian Tribal government, legal assistance to victims...
- Legal assistance to victims (2 vehicles to transport)
- Coalition for ed workshops & to transport students.

Services

Serve the needs of primarily American Indian Victims of domestic & dating violence, sexual assault, & stalking.

- Provide shelter, referrals, advocacy, legal assistance, some transportation, & emergency assistance for food, clothing, locks, & other necessities.

Coalition Efforts

- Education training, technical assistance, site visits to local tribes in Humboldt County. 8 federally recognized tribes with 3 of the largest tribes in California

Partnership Building Process

Identifying issues of common concern. Create an agenda & mission statement.

Building Trust!

- Reduce crime & violence
- Improved common cooperation
- Increased trust in law enforcement
- Mutual support for pursuing law enforcement grant funding opportunities & solutions

SUPERIOR COURT OF CALIFORNIA, COUNTY OF INYO
PROCEDURES MANUAL

TOPIC: **Registration of Out-of State Restraining Orders (DV-600)**
Including Tribal Court Protective Orders

GENERAL BACKGROUND INFORMATION: Full faith and credit are to be given to civil protective orders, criminal protective orders, tribal protective orders, and military protective orders. Parties may register these orders with the Superior Court of California, County of Inyo.

DO NOT let the title, **Registration of Out-of-State Orders;** limit your ability to file the orders. Orders may be made by a tribal court in California and filed under the provisions of Family Code §6400 et seq. and by using the DV-600 form.

Registration of these orders with the Superior Court is a priority and shall be handled as if a new request for domestic violence restraining order is being submitted to the court. Registration of a tribal court order will allow entry in to CARPOS (California Restraining and Protective Order System) and enable law enforcement to enforce these orders, except where limited by the provisions of Public Law §280.

PROCEDURE: Protected Persons may file a DV-600 with the Court, or Bishop Paiute Tribal Court representatives may assist those Protected Persons to register a Protective Order made by the tribal court.

When filed, a certified copy of the Tribal Court Protective Order must be attached to the signed DV-600 form. Clerk shall review documents:

- Is this a subsequent order which has previously been filed with our court?
 - If it is a subsequent order, be sure to enter in the previously filed case. **Do not create a new case.**
- Be sure the DV-600 also includes a complete description of the Restrained Person/Persons in #2.
- Has the Tribal Court Judge identified case as "Violence Against Women" or Domestic Violence?
- Is the expiration date of the protective order documented within the body of the order, not just in the caption?

Clerk shall open a civil case (one for each Restrained Person) using:

- Appropriate case type: SICVDV or SICVCH
- Event Code TC# (Tribal Court Number)
 - Enter # in text box
- Event Code 600
 - Register Out of State Restraining Order
- Perform a JALAN search for related cases

- Provide to the Judge-so he may review for conflicting orders in civil and criminal cases
- Submit to Judge as a priority for signature

After DV-600 order is signed by Judge, Court Clerk will:

- Make certified copies of the DV-600 form and attach to copies of the Tribal Court Protective Order for:
 - Service upon Restrained Person/s
 - Protected Person/s (including children or other named persons)
 - Protected Children's school or daycare provider
 - Law Enforcement Agencies with jurisdiction
 - Inyo County Sheriff, Bishop Police Department, Tribal Police, Inyo County Sheriff/Dispatcher
 - Service copy for Restrained Person/s
 - Tribal Court case file
- All copies to be given back to Tribal Court Representatives or Protected Person for **personal** service upon the Restrained Person/persons and distribution to other parties
- Fax copy of DV-600 and Tribal Court Protective Order to Sheriff/Dispatch
- Retain original certified copy of Tribal Court Order and DV 600 in Superior Court file
- Enter event code 601 Tribal Court Order Closing
- Personal Proof of Service form must be filed with Superior Court following service of Restraining Order and other case documents
 - (DV-200 Proof of Service (In Person) (Domestic Violence))
 - Or other approved signed proof of service form
- When Proof of Service received, fax to Dispatch

These files (letter size folders) will be stored in the Bishop branch in the cabinet with the Domestic Violence instructions.

**Section-by-Section Summary of H.R. 3402, the
Violence Against Women and Department of Justice Appropriations
Reauthorization Act of 2005**

Sec. 1. Short Title.

Sec. 2. Table of Contents.

Sec. 3. Universal Definitions and Grant Conditions. This section aggregates existing and new definitions of terms applicable to the Act. (Previously, relevant definitions were scattered in various Code provisions.) The section also sets forth universal conditions that apply to the Act's new and existing grant programs.

Title I: Enhancing Judicial and Law Enforcement Tools to Combat Violence Against Women

Sec. 101. STOP (Services and Training for Officers and Prosecutors) Grants Improvements. This section reauthorizes the cornerstone of the Act, the STOP program, at \$225,000,000 annually for 2007 through 2011 (it is currently authorized at \$185 million annually). This program provides state formula grants that bring police and prosecutors in close collaboration with victim services providers. Technical amendments increase the focus on appropriate services for underserved communities and ensure victim confidentiality.

Sec. 102. Grants to Encourage Arrest and Enforcement of Protection Order Improvements. This fundamental Department of Justice program is reauthorized at \$75,000,000 annually for 2007 through 2011 (it is currently authorized at \$65 million annually). States and localities use this funding to develop and strengthen programs and policies that encourage police officers to arrest abusers who commit acts of violence or violate protection orders. Amendments will provide technical assistance to improve tracking of cases in a manner that preserves confidentiality and privacy protections for victims. Purposes are amended to encourage victim service programs to collaborate with law enforcement to assist pro-arrest and protection order enforcement policies. In addition, this section authorizes family justice centers and extends pro-arrest policies to sexual assault cases.

Sec. 103. Legal Assistance for Victims Improvement. This section reauthorizes the grant program for legal services for protection orders and related family, criminal, immigration, administrative agency, and housing matters. It allows victims of domestic violence, dating violence, stalking, and sexual assault to obtain access to trained attorneys and lay advocacy services, particularly pro bono legal services, when they require legal assistance as a consequence of violence. This program has been expanded to provide services to both adult and youth victims. Previously authorized at \$40,000,000 annually, funding is set at \$65,000,000 annually for 2007 through 2011, to be administered by the Attorney General.

This provision also includes an amendment to ensure that all legal services organizations can assist any victim of domestic violence, sexual assault and trafficking without regard to the victim's immigration status. The organizations can use any source of funding they receive to

provide legal assistance that is directly related to overcoming the victimization, and preventing or obtaining relief for the crime perpetrated against them that is often critical to promoting victim safety.

Sec. 104. Ensuring Crime Victim Access to Legal Services. This section eases access to legal services for immigrant victims of violent crimes.

Sec. 105. The Violence Against Women Act Court Training and Improvements. This section creates a new program to educate the courts and court-related personnel in the areas of domestic violence, dating violence, sexual abuse and stalking. The goal of this education will be to improve internal civil and criminal court functions, responses, practices and procedures, including the development of dedicated domestic violence dockets. This section will also authorize one or more grants to create general educational curricula for state and tribal judiciaries to ensure that all states have access to consistent and appropriate information. This section is authorized at \$5,000,000 for each fiscal year 2007 through 2011 and it is administered by the Department of Justice.

Sec. 106. Full Faith and Credit Improvements. Technical amendments are made to the criminal code to clarify that courts should enforce the protection orders issued by civil and criminal courts in other jurisdictions. Orders to be enforced include those issued to both adult and youth victims, including the custody and child support provisions of protection orders. Amendment also requires protection order registries to safeguard the confidentiality and privacy of victims.

Section 107. Privacy Protections For Victims Of Domestic Violence, Sexual Violence, Stalking, And Dating Violence. This section creates new and badly-needed protections for victim information collected by federal agencies and included in national databases by prohibiting grantees from disclosing such information. It creates grant programs and specialized funding for federal programs to develop “best practices” for ensuring victim confidentiality and safety when law enforcement information (such as protection order issuance) is included in federal and state databases. It also provides technical assistance to aid states and other entities in reviewing their laws to ensure that privacy protections and technology issues are covered, such as electronic stalking, and training for law enforcement on high tech electronic crimes against women. It authorizes \$5,000,000 per year for 2007 through 2011 to be administered by the Department of Justice.

Section 108. Sex Offender Training. Under this section, the Attorney General will consult with victim advocates and experts in the area of sex offender training. The Attorney General will develop criteria and training programs to assist probation officers, parole officers, and others who work with released sex offenders. This section reauthorizes the program at \$3,000,000 annually for 2007 through 2011.

Sec. 109. National Stalker Database and Domestic Violence Reduction. Under this section, the Attorney General may issue grants to states and units of local governments to improve data entry into local, state, and national crime information databases for cases of stalking and domestic violence. This section reauthorizes the program at \$3,000,000 annually for 2007

through 2011.

Sec. 110. Federal Victim Assistants. This section authorizes funding for U.S. Attorney offices to hire counselors to assist victims and witnesses in prosecution of domestic violence and sexual assault cases. This section is reauthorized for \$1,000,000 annually for 2007 through 2011.

Sec. 111. Grants for Law Enforcement Training Programs. This section would authorize a Department of Justice grant program to help train State and local law enforcement to identify and protect trafficking victims, to investigate and prosecute trafficking cases and to develop State and local laws to prohibit acts of trafficking. It proposes \$10,000,000 in grants annually from 2006 to 2010.

Sec. 112. Reauthorization of the Court-Appointed Special Advocate Program. This section reauthorizes the widely-used Court-Appointed Special Advocate Program (CASA). CASA is a nationwide volunteer program that helps represent children who are in the family and/or juvenile justice system due to neglect or abuse. This provision also allows the program to request the FBI conduct background checks of prospective volunteers. This program is reauthorized at \$12,000,000 annually for 2007 through 2011.

Sec. 113. Preventing Cyberstalking. To strengthen stalking prosecution tools, this section amends the Communications Act of 1934 (47 U.S.C. 223(h)(1)) to expand the definition of a telecommunications device to include any device or software that uses the Internet and possible Internet technologies such as voice over internet services. This amendment will allow federal prosecutors more discretion in charging stalking cases that occur entirely over the internet.

Sec. 114. Updating the Federal Stalking Law. Section 114 improves the existing federal stalking law by borrowing state stalking law language to (1) criminalize stalking surveillance (this would include surveillance by new technology devices such as Global Positioning Systems (GPS)); and (2) to expand the accountable harm to include substantial emotional harm to the victim. The provision also enhances minimum penalties if the stalking occurred in violation of an existing protection order.

Sec. 115. Repeat Offender Provision. This section updates the criminal code to permit doubling the applicable penalty for repeat federal domestic violence offender – a sentencing consequence already permissible for repeat federal sexual assault offenders.

Sec. 116. Prohibiting Dating Violence. Utilizing the Act's existing definition of dating violence, section 115 amends the federal interstate domestic violence prohibition to include interstate dating violence.

Sec. 117. Prohibiting Violence in Special Maritime and Territorial Jurisdiction. This section tightens the interstate domestic violence criminal provision to include special maritime and territories within the scope of federal jurisdiction.

Sec. 118. Updating Protection Order Definition in 28 U.S.C. § 534(e)(3)(B).

Sec. 119. GAO Study and Report. This section directs the General Accounting Office to study the extent to which men, women, youth and children are victims of domestic violence and the availability of services to address the needs of these individual groups.

Sec. 120. Grants for Outreach to Underserved Populations. This grant program authorizes \$2 million annually for local, national, and regional information campaigns on services and law enforcement resources available to victims of domestic violence, dating violence, sexual assault and stalking.

Sec. 121. Enhancing Culturally and Linguistically Specific Services. This provision will authorize the Attorney General to pool 5% of each funding stream to the various VAWA programs and devote them to a new program to enhance culturally and linguistically specific services for victims of domestic violence, dating violence, sexual assault and stalking.

Title II. Improving Services for Victims of Domestic Violence, Dating Violence, Sexual Assault and Stalking

Sec. 201. Findings

Sec. 202. Sexual Assault Services Provision. This section creates a separate and direct funding stream dedicated to sexual assault services. Currently, the Act funds rape prevention programs, but does not provide sufficient resources for direct services dedicated solely to sexual assault victims, primarily rape crisis centers. Under this new program funding will be distributed by the Department of Justice to states and their sexual violence coalitions. The formula grant funds will assist States and Tribes in their efforts to provide services to adult, youth and child sexual assault victims and their family, including intervention, advocacy, accompaniment in medical, criminal justice, and social support systems, support services, and related assistance. Funding is also provided for training and technical assistance. This section authorizes \$50,000,000 annually for 2007-2011.

Sec. 203. Amendments to the Rural Domestic Violence and Child Abuse Enforcement Assistance Program. This section reauthorizes and expands the existing education, training and services grant programs that address violence against women in rural areas. This provision renews the rural VAWA program, extends direct grants to state and local governments for services in rural areas and expands purpose areas to include community collaboration projects in rural areas and the creation or expansion of additional victim services. New language expands the program coverage to sexual assault, child sexual assault and stalking. It also expands eligibility from rural states to rural communities, increasing access to rural sections of otherwise highly populated states. This section authorizes \$55,000,000 annually for 2007 through 2011 (it is currently authorized at \$40 million a year).

Sec. 204. Education, Training and Enhanced Services to End Violence Against Women with Disabilities. This section reauthorizes and expands the existing education, training and services grant programs that address violence against women with disabilities. New purpose areas include facility modifications and personnel costs for shelters to better serve victims with disabilities, the development of collaborative partnerships between victim service organizations

and organizations serving individuals with disabilities and the development of model programs that situate advocacy and intervention services for victims within organizations serving individuals with disabilities. The program is authorized at \$10,000,000 for each fiscal year 2007 through 2011.

Sec. 205. Education, Training and Services to End Violence Against and Abuse of Women Later in Life. This section reauthorizes and expands the existing education, training and services grant programs that address violence against elderly women. Grants will be distributed by the Department of Justice to States, local government, nonprofit and nongovernmental organizations for providing training and services for domestic violence, dating violence, sexual assault and stalking victims age 60 and older. The program is authorized at \$10,000,000 annually for 2007 through 2011.

Sec. 206. Strengthening the National Domestic Violence Hotline . Section 206 eliminates a current funding requirement that any funds appropriated to the Hotline in excess of \$3,000,000 be devoted entirely to a non-existent Internet program.

Title III. Services, Protection and Justice for Young Victims of Violence

Sec. 301. Findings

Sec. 302. Rape Prevention and Education. This section reauthorizes the Rape Prevention and Education Program. It appropriates \$80,000,000 annually (its current authorization level) for 2007 through 2011. Of the total funds made available under this subsection in each fiscal year, a minimum of \$1,500,000 will be allotted to the National Sexual Violence Resource Center.

Sec. 303. Services, Education, Protection and Justice for Young Victims of Violence. This section establishes a new subtitle that would create four new grant programs designed to address dating violence committed by and against youth.

(1) The Services to Advocate for and Respond to Teens program authorizes grants to nonprofit, nongovernmental and community based organizations that provide services to teens and young adult victims of domestic violence, dating violence, sexual assault or stalking. This section is authorized for \$15,000,000 annually for 2007 through 2011 and will be administered by the Department of Health and Human Services.

(2) The Access to Justice for Teens program is a demonstration grant program to promote collaboration between courts (including tribal courts), domestic violence and sexual assault service providers, youth organizations and service providers, violence prevention programs, and law enforcement agencies. The purposes of the collaborative projects are to identify and respond to domestic violence, dating violence, sexual assault and stalking committed by or against teens; to recognize the need to hold the perpetrators accountable; to establish and implement procedures to protect teens; and to increase cooperation among community organizations. This section is authorized at \$5,000,000 annually for 2007 through 2011 to be administered by Department of Justice.

(3) The third program established under Sec. 303 is the Grants for Training and Collaboration on the Intersection between Domestic Violence and Child Maltreatment program. It provides grants to child welfare agencies, courts, domestic or dating violence service providers, law enforcement and other related community organizations. Grant recipients are to develop collaborative responses, services and cross-training to enhance responses to families where there is both child abuse and neglect and domestic violence or dating violence. This section authorized at \$5,000,000 annually 2007 through 2011 to be administered by the Department of Justice.

(4) The final program established under 303 is the Supporting Teens through Education and Protection program. It will be administered by the Department of Justice to train school personnel to recognize signs of domestic violence and establish policies for prevention.

Sec. 304. Reauthorization of Grants to Reduce Violence Against Women on Campus. This amends the existing campus program to be administered by the Department of Justice on a three-year grant cycle, provides more money and sets parameters for training of campus law enforcement and campus judicial boards. This section is authorized at \$12,000,000 for 2007 and \$15,000,000 for 2008 through 2011 (it is currently authorized at \$10 million).

Sec. 305. Juvenile Justice. The overwhelming majority of girls entering the juvenile justice system are victims of abuse and violence, and the system must provide adequate services that are tailored to girls' gender-specific needs and to their experiences of abuse. These provisions amend the Juvenile Justice and Delinquency Prevention Act to permit States to detail their gender-specific services.

Sec. 306. Safe Havens for Children. This section continues and expands a pilot Justice Department grant program aimed at reducing domestic violence and child abuse during parental visitation or the transfer of children for visitation by expanding the availability of supervised visitation centers. It reauthorizes the program for \$20,000,000 annually for 2007 through 2011.

Title IV. Strengthening America's Families by Preventing Violence

Sec. 401. Findings, Purpose and Authorization for three new, child-focused programs. This section creates the Grants to Assist Children and Youth Exposed to Violence that authorizes new, collaborative programs, administered by the Office on Violence Against Women in the Department of Justice in collaboration with the Administration for Children, Youth and Families in the Department of Health and Human Services, to provide services for children who have been exposed to domestic violence, dating violence, sexual assault or stalking for the purpose of mitigating the effects of such violence. Programs authorized under this section include both direct services for children and their non-abusing parent or caretaker, and training/coordination for programs that serve children and youth (such as Head Start, child care, and after-school programs). It is authorized at \$20,000,000 annually from 2007 through 2011.

This section also establishes the Development of Curricula and Pilot Programs for Home Visitation Projects. Home visitation services are offered in many states and on some military bases to provide assistance to new parents or families in crisis. Home visitation services, in addition to providing assistance to the parents, look for signs of child abuse or neglect in the home. This provision, administered by the Office on Violence Against Women in the

Department of Justice in collaboration with the Administration for Children, Youth and Families in the Department of Health and Human Services, creates model training curricula and provides home visitation services to help families to develop strong parenting skills and ensure the safety of all family members. The program is authorized at \$7,000 per year for 2007-2011.

The final new program engages men and youth in preventing domestic violence, dating violence, sexual assault and stalking. It authorizes the development, testing and implementation of programs to help youth and children develop respectful, non-violent relationships. The grant is administered by the Office on Violence Against Women at the Department of Justice in collaboration with the Department of Health and Human Services, and eligible entities include community-based youth service organizations and state and local governmental entities. It is authorized at \$10,000,000 annually for 2007 through 2011.

Sec. 402. Study Conducted by the Centers for Disease Control and Prevention. This provision authorizes \$2 million to the Centers for Disease Control to study the best practices for reducing and preventing violence against women and children and an evaluation of programs funded under this Title.

Sec. 403. Public Awareness Campaign. This section mandates the Attorney General to award grants to States for carrying out public awareness campaigns.

Title V: Strengthening the Health Care System's Response To Domestic Violence, Dating Violence, Sexual Assault and Stalking

Sec. 501. Findings.

Sec. 502. Purposes.

Sec. 503: Training and Education of Health Professionals. This section provides new grants to train health care providers and students in health professional schools on recognizing and appropriately responding to domestic and sexual violence. The provision authorizes \$3,000,000 each year from 2007 through 2011 to be administered by the Department of Health and Human Services.

Sec. 504: Grants to Foster Public Health Responses to Domestic Violence, Dating Violence, Sexual Assault and Stalking. Section 504 provides grants for statewide and local collaborations between domestic and sexual violence services providers and health care providers including state hospitals and public health departments. These programs would provide training and education to health care providers and would develop policies and procedures that enhance screening of women for exposure to domestic and sexual violence, and encourage proper identification, documentation and referral for services when appropriate. This section is authorized at \$5,000,000 annually from 2007 through 2011.

Section 506: Research on Effective Interventions in the Health Care Setting to Address Domestic Violence. Includes funding for the Centers for Disease Control and Prevention and Administration for Healthcare Research and Quality to evaluate effective interventions within the health care setting to improve abused women's health and safety and prevent further

victimization. This section is authorized at \$5,000,000 annually from 2007 through 2011.

Title VI. Housing Opportunities and Safety for Battered Women and Children

Sec. 601. Amends the Violence Against Women Act to include a title addressing housing needs of victims of domestic violence, dating violence, sexual assault and stalking.

Sec. 41401. Findings.

Sec. 41402. Purposes.

Sec. 41403. Definitions.

Sec. 41404. Collaborative Grants to Increase the Long-term Stability of Victims. Modeled after successful affordable housing, community development, and “housing first” programs across the nation, this section would provide \$10,000,000 for the Department of Health and Human Services in partnership with the Department of Housing and Urban Development to fund collaborative efforts to: place domestic violence survivors into long-term housing solutions as soon as reasonable and safe; provide services to help individuals or families find long-term housing; provide financial assistance to attain long-term housing (including funds for security deposits, first month’s rent, utilities, down payments, short-term rental assistance); provide services to help individuals or families remain housed (including advocacy, transportation, child care, financial assistance, counseling, case management, and other supportive services); and create partnerships to purchase, build, renovate, repair, convert and operate affordable housing units. Funds may not be directly spent on construction, modernization, or renovations.

Sec. 41405. Grants to Combat Violence Against Women in Public and Assisted Housing. This section establishes grants to assist public and Indian housing authorities, landlords, property management companies and other housing providers and agencies in responding appropriately to domestic and sexual violence. Grants would provide education and training, development of policies and practices, enhancement of collaboration with victim organizations, protection of victims residing in public, Indian and assisted housing, and reduction of evictions and denial of housing to victims for crimes and lease violations committed or directly caused by the perpetrators of violence against them. The program is authorized at \$10,000,000 and will be administered by the Office on Violence Against Women in the Department of Justice.

Sec. 602. Transitional Housing Assistance Grants for Victims of Domestic Violence, Dating Violence, Sexual Assault or Stalking. Section 602 amends the existing transitional housing program created by the PROTECT Act and administered by the Office on Violence Against Women in the Department of Justice. This section expands the current direct-assistance grants to include funds for operational, capital and renovation costs. Other changes include providing services to victims of dating violence, sexual assault and stalking; extending the length of time for receipt of benefits to match that used by HUD transitional housing programs; and updating the existing program to reflect the concerns of victim service providers. The provision would increase the authorized funding for the grant from \$30,000,000 to \$40,000,000.

Sec. 603. Public and Indian Housing Authority Plans Reporting Requirement.

Sec. 604. Housing Strategies. Sections 603 and 604 amend the Housing and Urban Development (HUD) Agency reporting requirements imposed on public housing applicants. Pursuant to the amendment, HUD applicants must include any plans to address domestic violence, dating violence, sexual assault and stalking in their application.

Sec. 605. Amendment to the McKinney-Vento Homeless Assistance Act. This provision amends the Homeless Management Information Systems (HMIS) statute in the McKinney-Vento Homelessness Assistance Act to protect the confidentiality of victims of domestic violence, dating violence, sexual assault and stalking receiving assistance from HUD-funded victim service programs. It requires that these programs refrain from disclosing personally identifying information to the HMIS.

Sec. 606. Amendments to the Low Income Housing Assistance Voucher Program.

Sec. 607. Amendments to the Public Housing Program. Sections 606 and 607 amend the Low Income Housing Assistance Voucher program (also known as the Section 8 or Housing Choice Voucher program) and the Public Housing program to state that an individual's status as a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance by a public housing authority. It also states that incidents of domestic violence, dating violence and stalking shall not be good cause for terminating a lease held by the victim. The amendments specify that the authority of an owner or PHA to evict or terminate perpetrators of abuse shall not be limited and gives landlords and PHAs the ability to bifurcate a lease to maintain the victim's tenancy while evicting the perpetrator. Victims must certify their status as victims by presenting appropriate documentation to the PHA or owner, and the language clarifies that victims can be evicted for lease violations or if their tenancy poses a threat to the community.

Title VIII – Protection of Battered and Trafficked Immigrant Women

Sec. 801. Treatment of Spouse and Children of Victims. For some trafficking victims, providing assistance in the investigation or prosecution of the trafficking case can endanger or traumatize the victim or her family members. The ability to ensure safety of family members living abroad is crucial to trafficking victims' or crime victims' well being and ability to effectively assist in prosecutions. This section allows T and U visa holders' spouse, children, parents, and unmarried siblings under 18 to join them in the United States.

Sec. 802. Permitted Presence of Victims of Severe Trafficking. This section permits trafficking victims' unlawful presence in the United States only if the trafficking is at least one central reason for the unlawful presence. The limited exception to the unlawful presence provision is identical to that afforded to non-citizen survivors of domestic abuse.

Sec. 803. Adjustment of Status for Victims of Trafficking. This section shortens the adjustment time and allows trafficking victims to apply for lawful permanent residency 2 years after receiving a T visa.

Sec. 804. Protection and Assistance for Victims of Trafficking. This section clarifies the roles and responsibilities accorded to the Department of Justice and the Department of Homeland Security in addressing trafficking and supporting victims. Furthermore, this section clarifies that “assistance” by trafficking victims includes responding to and cooperating with requests for evidence and information.

Sec 805. Protecting Victims of Child Abuse and Incest. This section clarifies language to ensure that children of VAWA self-petitioners abused by lawful permanent residents receive the VAWA immigration protection and lawful permanent residency along with their abused parent. It also assures that children eligible for VAWA immigration relief are not excluded from Child Status Protection Act protection. This section enhances protection for incest victims by permitting VAWA self-petitions to be filed until age 25 by individuals who qualified for VAWA relief before they were 21 but did not file a petition before that time if the abuse is at least one central reason for the delayed filing.

Under current law, adopted foreign-born children must reside with their adoptive parents for two years to gain legal immigration status through their adoptive parents. This section allows adopted children who were battered or subjected to extreme cruelty by their adoptive parent or the adoptive parent’s family member residing in the household to attain legal immigration status without having to reside for two years with the abusive adoptive family member.

Sec. 811. Definition of VAWA Self-Petitioner. This section creates a term “VAWA self-petitioner” which covers all forms of VAWA self-petitions created in VAWA 2000 including VAWA Cuban Adjustment, VAWA HRIFA and VAWA NACARA applicants.

Sec. 812. Application in Cases of Voluntary Departure. Under current law, people who fail to comply with voluntary departure orders are barred for 10 years from receiving lawful permanent residency through adjustment of status, cancellation of removal (including VAWA cancellation), change of status, and registry. Denying lawful permanent residency to immigrant victims of domestic violence, sexual assault and trafficking undermines Congressional intent to provide immigration relief crucial to supporting crime victims cooperating with law enforcement and offering protection for battered immigrant spouses and children. This section exempts victims eligible for VAWA, T or U relief from the harsh consequences of failing to comply with voluntary departure orders as long as the extreme cruelty or battery is at least one of the central reasons for the overstay.

Sec. 813. Removal Proceedings. This section adds domestic abuse to the list of exceptional circumstances that allow immigrants to file motions to reopen in removal proceedings. VAWA 2000 allowed immigration judges in cancellation of removal and adjustment of status proceedings to waive ineligibility grounds for some VAWA eligible battered petitioners, who acted in self defense, violated their own protection order, or were involved in a crime that didn’t result in serious bodily injury or where there was a connection between the crime and their own abuse. This section corrects drafting errors that have made these waivers procedurally unavailable to battered immigrant victims.

Sec. 814. Eliminating Abusers’ Control Over Applications and Limitation on Petitioning

for Abusers. The Violence Against Women Act enabled battered Haitian Refugee Immigration Fairness Act and Cuban Adjustment Act applicants to apply for VAWA immigration relief. In order for these applicants to access the relief, they need to file motions to reopen. However, due to a drafting oversight, the deadline for filing motions to reopen had already passed when VAWA 2000 became law. This amendment corrects the drafting and allows these battered immigrants to file motions to reopen and thereby access the relief that was created for them in VAWA- 2000.

This section also makes approved VAWA self-petitioners and their spouses eligible for employment authorization. Providing employment authorization earlier in the application process gives battered immigrant self-petitioners the means to sever economic dependence on their abusers, promoting their safety and the safety of their children. Section 814 also prohibits a VAWA self-petitioner or a T or U-visa holder from petitioning for immigrant status for their abuser.

Sec. 815. Application for VAWA-Related Relief. This amendment clarifies that certain battered spouses and children can access relief under the Nicaraguan Adjustment and Central American Relief Act that was specifically created for those groups in VAWA 2000. This amendment ensures relief even in cases where an abusive spouse or parent failed to apply to adjust the survivor's status to lawful permanent residency by the statutory deadline or failed to follow through with applications after filing. Thus, this amendment prevents abusers from controlling their non-citizen victims by blocking their ability to successfully access the relief that was intended under VAWA 2000.

Sec 816. Self Petitioning Parents. This section expands the scope of VAWA immigration relief to include intergenerational abuse, allowing non-citizen parents who are abused by their adult U.S. citizen son or daughter to seek VAWA relief.

Sec. 817. Enhanced VAWA Confidentiality Non-disclosure Protections. This section amends VAWA's confidentiality protections so that they cover a range of immigrant victims eligible for the various forms of VAWA or crime victim related immigration relief including T visa victims, VAWA Cubans, VAWA HRIFAs, VAWA NACARAs and VAWA suspension applicants. This section also ensures that VAWA confidentiality rules apply to each relevant federal agency including the Department of Homeland Security and the Department of State.

Sec 821. Duration of T and U visas. This provision would authorize issuance of T and U visas for a period of not more than 4 years.

Sec. 822. Technical Correction to References in Application of Special Physical Presence and Good Moral Character Rules. This section corrects two technical drafting errors. First it ensures that the provisions on physical presence and on good moral character apply to all VAWA cancellation applicants. Second it corrects an incorrectly cited section so that the "good moral character" bar applies to bigamy, not unlawful presence.

Sec. 823. Petitioning Rights of Certain Former Spouses Under Cuban Adjustment. This section would ensure that battered immigrants are still able to adjust under VAWA Cuban

adjustment relief even if they are divorced from the abuser. This provision is necessary to prevent abusers from cutting their spouses off from potential immigration status adjustment by divorcing them.

Sec. 824. Self-Petitioning Rights of HRIFA Applicants. This amendment clarifies that Haitian abused applicants can access relief that was specifically created for them in VAWA 2000. Abusers could control battered immigrants by not adjusting their own status to lawful permanent residency pursuant to the Haitian Refugee Immigration Fairness Act (“HRIFA”). The abuser may not follow through with the lawful permanent residency application or fail to file an application at all. This technical correction remedies the problem to ensure that all abused spouses and children otherwise eligible for VAWA HRIFA are able to access this relief.

Sec 825: Motion to Reopen. This section, a correction to VAWA 2000, gives domestic abuse victims the opportunity to file one motion to reopen to pursue VAWA relief, and exempts them from the special motion to reopen filing deadlines.

Sec 826. Protecting Abused Juveniles. This section assures that immigration authorities are not required to contact abusive parents or family members in connection with the abused, neglected, or abandoned juvenile’s application for special immigrant juvenile status. This prevents abusive parents from keeping their children from accessing help and support in the United States.

Sec. 827. Exceptions for the Protection of Domestic Violence and Crime Victims. This section carves out an exception to the current requirements regarding driver’s license or identification cards for victims of domestic violence to ensure their safety.

Sec. 831. Short Title for the International Marriage Broker Regulation Act of 2005.

Sec. 832. International Marriage Broker Information Requirements. This section provides that a U.S. citizen filing a petition for a K visa for a fiancée from another country must provide information on criminal convictions for specified crimes. These include a list of violent crimes, including assault and battery as well as crimes relating to substance or alcohol abuse. The Department of Homeland Security will provide this criminal history information, along with results of their search for any criminal convictions to the foreign national beneficiary. The Department of State is prohibited from approving a fiancée visa if the petitioner has petitioned for more than 2 K visas in the past, or less than 2 years have passed since the petitioner filed for a K visa and that visa was approved. DHS can waive this bar, but if person has history of violent crimes, the bar cannot be waived unless DHS determined that there are extraordinary circumstances, or the individual's crimes were a result of domestic violence, the individual was not the primary perpetrator of the violence, and the crime did not result in serious bodily injury. DHS is directed to create a database to track repeated K applications and notify petitioner and spouse when second K is applied for in 10 year period. All future K applications will trigger similar notice, with domestic violence pamphlet being sent to K beneficiary. The fact that an individual was provided with this information and the domestic violence pamphlet for immigrants cannot be used to deny their eligibility for relief under VAWA.

Section 833. Domestic Violence Information and Resources for Immigrants and Regulation of International Marriage Brokers. This section directs DOS, DHS and DOJ to create a

pamphlet on domestic violence rights and resources for immigrants as well as a summary of that pamphlet for use by Federal officials in the interview process. The pamphlet is to be translated into at least 14 languages and the required list of translations is to review and revised every 2 years based on the language spoken by the greatest concentration of K nonimmigrant visa applicants. The pamphlet is to be mailed to all K applicants with their visa application process instruction packet as well as a copy of the petition submitted by the petitioner. The pamphlet is to be made available to the public at all consular posts, and posted on the DOS, DHS, and consular post websites. The pamphlet will also be provided to any international marriage broker, government agency or non-governmental advocacy organization.

Section 834. Sharing of Certain Information. This section provides that there is no bar to the sharing of information between the relevant departments for the purpose of fulfilling the disclosure requirements of the U.S. petition.

Title IX – Safety for Indian Women

Sec. 901 and 902. Findings and Purposes.

Sec. 903. Consultation Requirement. This section requires the Secretary of the Interior and the Attorney General to consult with and seek recommendations from tribal governments concerning the administration of tribal VAWA funds and programs.

Sec. 904. Analysis and Research of Violence Against Indian Women. This provision requests that the National Institute of Justice conduct a national baseline study to examine violence against Indian women and the effectiveness of Federal, State, local and tribal responses. It also requires the Attorney General to establish a task force to assist in the development and implementation of the study and report to Congress. Members of the study shall include tribal governments and national tribal organizations. The violence study is authorized at \$1,000,000 for fiscal years 2007 and 2008. In addition, this section requires the Secretary of Health and Human Services to conduct a study of injuries to Indian women from incidents of domestic violence, dating violence, sexual assault and stalking and the costs associated with these injuries. The injury report shall be reported to Congress and is authorized at \$500,000 for fiscal years 2007 and 2008.

Sec. 905. Tracking of Violence Against Indian Women. In cases of domestic violence, dating violence, sexual assault and stalking, the provision authorizes tribal law enforcement to access and enter information on to Federal criminal information databases (set out in 28 U.S.C. § 534). Second, it permits tribes to develop and maintain national tribal sex offender registries and tribal protection order registries. To undertake the latter, the provision authorizes \$1,000,000 for fiscal years 2007 through 2011.

Sec. 906. Safety for Indian Women Formula Grants. To better administer grants to Indian Country and enhance the responses of Indian tribal governments, this measure authorizes the Office on Violence Against Women to combine all Native American set asides appropriated under this Act and create a single grant source.

Sec. 907. Deputy Director in the Office on Violence Against Women. To coordinate and guide Federal, State, local and tribal responses to violence against Indian women, this provision establishes a Deputy Director of Tribal Affairs in the Office on Violence Against Women. The Deputy Director is charged with several duties, including, but not limited to, oversight of tribal grant programs and developing federal policies and protocols on matters relating to violence against Indian women. In addition, the Deputy Director is authorized to ensure that some portion of tribal funds distributed through VAWA programs will be devoted to enhancing tribal resources such as legal services or shelters for Indian women victimized by domestic violence or sexual assault.

Sec. 908 and 909. Enhanced Criminal Law Resources and Domestic Assault by Habitual Offender – Sections 908 and 909 make several changes to existing criminal law. Under current law persons who have been convicted of a qualifying misdemeanor crime of domestic violence under federal or state law are prohibited from possessing firearms. This amendment would expand that prohibition to those persons convicted of a qualifying misdemeanor crime of domestic violence under tribal law.

Under current law, federal courts have exclusive jurisdiction over domestic violence crimes committed in Indian country where the perpetrator is a non-Indian and the victim is an Indian, and concurrent jurisdiction with the tribal courts where the perpetrator is an Indian and the victim is a non-Indian. Under this scheme, federal officers can only arrest for misdemeanors that occur in the presence of the arresting officer. Most domestic violence offenses are misdemeanors not committed in the presence of a federal officer. Accordingly, this amendment will eliminate that requirement and allow a federal arrest if there is reasonable grounds that the offense was committed. Finally, the provision creates a repeat offender provision.

Title X – DNA Fingerprinting

Sec. 1001. Short Title

Sec. 1002. Use of Opt-Out Procedure to Remove Samples from National DNA Index. Because this title expands the scope of the national DNA database to include DNA samples from arrestees, this particular section amends the current expungement protocols and directs the FBI to remove samples in the event of an overturned conviction, acquittal, or the charge was dismissed.

Sec. 1003. Expanded Use of COIS Grants. To reduce the extraordinary backlog of rape kits and other crime scene evidence waiting for DNA testing, the federal government makes available to States a targeted DNA grant program. Specifically, States may seek funding to reduce the backlog in crime scene evidence, to reduce the backlog in DNA samples of offenders convicted of qualifying state offenses, or to enhance the State's DNA laboratory capabilities. This section would expand the grant purpose regarding offender DNA samples to include all samples collected under applicable state law; accordingly, States could use federal funding to test samples collected from arrestees or voluntary elimination samples.

Sec. 1004. Authorization to Conduct DNA Sample Collection From Persons Arrested or Detained Under Federal Authority. Current law allows federal authorities to collect DNA

samples from individuals upon indictment. This provision would expand that authority to permit the Attorney General to collect DNA at arrest or detention of non-United States persons.

Sec. 1005. Tolling of Statute of Limitations for Sexual Abuse Offenses. This amendment strikes a carve-out authorizing John Doe indictments in sexual assault crimes and makes uniform the federal law that tolls the statute of limitations for all federal crimes where DNA evidence is collected (§ 3297).

Title XI—Department of Justice Reauthorization

Secs. 1101-1104. Authorization of Appropriations for Fiscal Years 2006-2009. Sections 1101-1104 set forth specific sums authorized to be appropriated to carry out the activities of the Department of Justice for Fiscal Years 2006 through 2009.

Section 1105. Organized Retail Theft Task Force. Section 1105 requires the Department of Justice and the Federal Bureau of Investigation to establish, in consultation with the retail community, an Organized Retail Theft Task Force. The task force will provide expertise to the retail community for the establishment of a national database or clearinghouse maintained by the private sector to identify and track organized retail theft throughout the United States. Authorizes \$5 million per year from FY06-09 for the activities of the task force.

Section 1106. United States-Mexico Border Violence Task Force. Section 1106 requires the Attorney General to establish a task force in Laredo, Texas to combat drug and firearms trafficking, violence and kidnapping along the U.S.-Mexico border. Authorizes \$10 million per year from FY06-09 for the establishment and operation of the task force and associated law enforcement activities.

Section 1107. National Gang Intelligence Center. Section 1107 requires the Attorney General to establish a National Gang Intelligence Center and database administered by the FBI to collect, analyze and disseminate gang activity information from federal, state and local law enforcement and other officials. Authorizes \$10 million per year from FY06-09 for the activities of the Center.

Subtitle B—Improving the Department of Justice’s Grant Programs

Chapter 1—Assisting Law Enforcement and Criminal Justice Agencies

Section 1111. Merger of Byrne Grant and Local Law Enforcement Block Grant Programs. Section 1111 merges the current Byrne Grant Program (both formula and discretionary) and the Local Law Enforcement Block Grant Programs into one new Edward Byrne Memorial Justice Assistance Grant Program. This will allow states and local governments to make one application for these funds annually for a four-year term.

The formula for distributing these grants combines elements of the current Byrne and LLEBG formulas. For allocating funds to the states, each state automatically receives 0.25% of the total. Of the remaining amount, 50% is divided among the states according to population (the method

currently used under Byrne) and 50% is divided up based on the violent crime rate (the method currently used under LLEBG). Each state's allocation is then divided among state and local governments in the following manner: sixty percent of the allocation goes to the state. Then, that 60% is divided between state and local governments based on their relative percentages of overall criminal justice spending within the state. The state keeps its portion of the 60% and administers the local portion at its discretion.

The remaining 40% of the state's allocation goes directly to local governments from OJP. Each class of local governments (e.g., cities, counties, townships, etc.) gets a share based on its relative percentage of local criminal justice spending within the state. Within each class, the class's share is divided between the local governments in that class based on their crime rate. This is similar to how LLEBG grants are now done.

The authorization also makes an important change to allow the Attorney General in his discretion to reserve up to five percent of all funds for states experiencing a precipitous or extraordinary increase in crime, or to prevent, compensate or mitigate any significant harm resulting from the operation of the new formula.

The bill authorizes \$1.075 billion for the program in FY06 and such sums as necessary for FY07-FY09. A new feature of the program is that states will be allowed to keep grant funds in interest bearing accounts until spent and then keep the interest. However, all money must be spent during the four-year grant period. In addition, the new program consolidates the current 28 specific purposes for Byrne grants and 9 specific purposes for LLEBG grants into 6 broad purposes intended to cover the same ground while giving more flexibility to use the grants constructively.

Section 1112. Clarification of Number of Recipients Who May Be Selected in a Given Year to Receive Public Safety Officer Medal of Valor. Section 1112 amends the Public Safety Officer Medal of Valor Act of 2001. As enacted, the Act provided that no more than five medals may be awarded per year and that they may only be awarded to individuals. In some instances, the acts of valor are performed by teams of individuals rather than one person. To address this problem, section 1112 amends the Act to provide that the medal may be awarded to groups of individuals as well as single individuals.

Section 1113. Clarification of Official to be Consulted by Attorney General in Considering Application for Emergency Federal Law Enforcement Assistance. Section 1113 amends the Emergency Federal Law Enforcement Assistance program (42 U.S.C. § 10501 et seq.) to clarify that in awarding grants under this program, the Attorney General shall consult with the Assistant Attorney General for the Office of Justice Programs rather than the Director of the Office of Justice Assistance. This change simply brings the statute into conformity with the existing chain of command in the Department.

Section 1114. Clarification of Uses for Regional Information Sharing System Grants. Section 1114 amends the authorization for the Regional Information Sharing System (42 U.S.C. § 3796h) to clarify its regional character and its authority to establish and maintain a secure telecommunications backbone.

Section 1115. Integrity and Enhancement of National Criminal Record Databases. Section 1115 amends the authorizing statute for the Bureau of Justice Statistics (42 U.S.C. § 3732): (1) to clarify that the Director shall be responsible for the integrity of data and statistics and the prevention of improper or illegal use or disclosure; (2) to provide specific authorization for the already existing National Criminal History Background Check System, the National Incident-Based Reporting System, and the records of the National Crime Information Center and to facilitate state participation in these systems; and (3) to facilitate data-sharing agreements between the Bureau of Justice Statistics and other federal agencies.

Section 1116. Extension of the Matching Grant Program for Law Enforcement Armor Vests. This section extends the matching program for law enforcement bulletproof vests for FY 2009.

Chapter 2—Building Community Capacity to Prevent, Reduce, and Control Crime

Section 1121. Office of Weed and Seed Strategies. Section 1121 creates a new Office of Weed and Seed Strategies. This office will replace the current Executive Office of Weed and Seed. Authorized \$60 million for this program in FY 20006, and such sums as are necessary thereafter.

Chapter 3—Assisting Victims of Crime

Section 1131. Grants to Local Nonprofit Organizations to Improve Outreach Services to Victims of Crime. Section 1131 amends the crime victim assistance grants program to allow grants of less than \$10,000 to be made to smaller neighborhood and community-based victim service organizations. Currently, grants under this program tend to go to larger organizations, and this amendment simply emphasizes that some of the money spent in this program should go to smaller organizations as well.

Section 1132. Clarification and Enhancement of Certain Authorities Relating to Crime Victims Fund. Section 1132 makes several minor adjustments to the authorities relating to the Crime Victims Fund. Subsection 1132(1) clarifies that the fund may only accept gifts, donations, or bequests if they do not attach conditions inconsistent with applicable laws or regulations and if they do not require the expenditure of appropriated funds that are not available to the Office of Victims of Crime. Current law establishes a \$50 million antiterrorism reserve within the fund. Each year that reserve may be replenished by using up to 5% of the money in the fund that was not otherwise expended during that year. Subsection 1132(2) changes the word “expended” to “obligated” so that funds that have already been obligated for other purposes, but not yet spent will not be counted for this purpose.

Subsection 1132(3) allows the Assistant Attorney General to direct the use of the funds available for Indian child abuse program grants under 42 U.S.C. § 10601(g) and to use 5% of those funds for grants to Indian tribes to establish victim assistance programs.

Section 1133. Amounts Received under Crime Victim Grants may be Used by State for

Training Purposes. Section 1133 amends the grant programs for victim compensation and victim assistance to allow the states part of the 5% reserved for administrative costs for training purposes.

Section 1134. Clarification of Authorities Relating to Violence Against Women Formula and Discretionary Grant Programs. Section 1134 makes minor clarifications to the program to fund grants to combat violent crimes against women. Subsection 1134(a) clarifies that grants may be made to Indian tribal domestic violence coalitions and corrects other technical errors and makes conforming changes. Subsection 1134(b) changes the Attorney General's reporting requirement on the program from annual to biennial.

Section 1135. Change of Certain Reports from Annual to Biennial. Section 1135 amends the reporting provisions under five grant programs to change them from annual to biennial.

Section 1136. Grants for Young Witness Assistance. Section 1136 authorizes the Attorney General to make grants to State and local prosecutors and law enforcement agencies to support juvenile and young adult witness assistance programs. Grant funds may be used to develop witness counseling, pre- and post-trial assistance, educational services, protective services for witnesses and families in the instance of a serious threat of harm, and community outreach to encourage witness participation. Authorizes \$3 million per year during FY06-09 for the activities of the section.

Chapter 4—Preventing Crime

Section 1141. Clarification of Definition of Violent Offender for Purposes of Juvenile Drug Courts. Section 1141 amends the juvenile drug court grant program so that offenders who are convicted of a violent misdemeanor may participate in the program. Currently, only non-violent misdemeanor offenders may participate in the program.

Section 1142. Changes to Distribution and Allocation of Grants for Drug Courts. Section 1142(a) repeals the requirement that all states must receive a minimum allocation under the program. Section 1142(b) provides for training by the newly created Community Capacity Development Office to assist applicants in how to successfully pursue grants and strengthen existing programs, with special emphasis on rural states, areas and communities. Authorizes \$70 million per year for FY07-08 for the drug courts program.

Section 1143. Eligibility for Grants under Drug Court Grants Program Extended to Courts that Supervise Non-Offenders with Substance Abuse Problems. Section 1143 amends the drug court program to allow continuing supervision over non-violent offenders as well as other related persons who may be before the court. This will allow a drug court to consolidate the cases of related individuals who may be under its jurisdiction at one time and supervise them jointly.

Section 1144. Terms of Residential Substance Abuse Treatment Program for Local Facilities. Section 1144 amends the Residential Substance Abuse Treatment for State Prisoners program to clarify that the grants should go to local correctional facilities and detention facilities

where prisoners are held long enough to carry out a 6-12 month course of drug treatment.

Section 1145. Enhanced Residential Substance Abuse Treatment for State Prisoners.

Section 1145 requires that, as a condition of receiving funds under the program, States must implement or continue to require urinalysis or other drug testing of individuals before, during and after participation in the RSAT program. The section also requires States to implement aftercare services as a condition of receiving a grant.

Section 1146. Residential Substance Abuse Treatment Program for Federal Facilities.

Section 1146 reauthorizes the federal RSAT program found at 18 U.S.C. 3621(e).

Chapter 5—Other Matters

Section 1151. Changes to Certain Financial Authorities. Subsection 1151(a) exempts certain programs exempt from paying interest to the States on late disbursements from paying a charge to the Treasury for the same purpose.

Subsection 1151(b) exempts the Southwest Border Prosecutor Initiative from the requirement that it reimburse the Treasury when it makes untimely payments and the requirement that it pay interest to states for untimely payments.

Subsection 1151(c) clarifies that the Bureau of Alcohol, Tobacco and Firearms has the same undercover authority as other Department of Justice law enforcement agencies.

Section 1152. Coordination Duties of Assistant Attorney General. Section 1152(a) amends the authorizing statute for OJP to include the Office of Victims of Crime within the list of OJP bureaus. Subsection 1152(b) allows the Assistant Attorney General to place special conditions on all grants and to determine priority purposes for formula grants.

Section 1153. Simplification of Compliance Deadlines Under Sex-Offender Registration

Laws. Under current law, states are required to establish state registries of offenders who have committed crimes against minors or who have committed sexually violent crimes. They are also required to share this information with the FBI so that it can maintain a national database. States who do not comply by the deadline can lose 10% of their Byrne grant funding. Some states have made good faith efforts to comply with this requirement, but are still struggling to implement it.

Subsection 1153(a) gives these states an additional three years after the date of enactment to implement this requirement. It further allows the Attorney General to extend this deadline for an additional two years if the state is making a good faith effort to comply. Subsection 1153(b) corrects a drafting error in the language relating to the provisions relating to the length of registrations required by those who have committed offenses against minors and those who are sexually violent predators. This correction makes the two periods consistent and removes an erroneous implication that the period for sexually violent offenders could be terminated prematurely.

Section 1154. Repeal of Certain Programs. Section 1154 repeals grant programs that have

been authorized, but have largely not been funded in recent years: the Criminal Justice Facility Construction Pilot Program; the Local Crime Prevention Block Grant Program; the Assistance for Delinquent and At-Risk Youth Program; and the Improved Training and Technical Automation Program; and the Other State and Local Aid Program.

Section 1155. Elimination of Certain Notice and Hearing Requirements. Section 1155 eliminates the requirement that OJP must provide notice and a hearing for grant applicants whose applications are denied. It further eliminates the opportunity for appellate review of the decisions arising from such hearings.

Section 1156. Amended Definitions for Purposes of Omnibus Crime Control and Safe Streets Act of 1968. Section 1156 broadens the definition of the term “Indian Tribe” to allow more tribes to be treated as units of local government for purposes of OJP grants. It broadens the definition of the term “combination” of State and local governments to include those who jointly plan. It amends the definition of the term “neighborhood or community-based organizations” to clarify that it includes faith-based organizations.

Section 1157. Clarification of Authority to Pay Subsistence Payments to Prisoners for Health Care Items and Services. Under current law, the Attorney General is required to pay for health care items and services for certain prisoners in the custody of the United States. In every instance, he must not pay more than the lesser of what the Medicare or Medicaid program would pay. Section 1157 simplifies the Attorney General’s responsibilities by providing that he shall not pay more than the Medicare rate. It also substitutes the Department of Homeland Security for a reference to the now defunct Immigration and Naturalization Service.

Section 1158. Office of Audit, Assessment, and Management. Section 1158 creates a new Office of Audit, Assessment, and Management within OJP. This office is authorized to audit, exercise corrective actions with respect to, and manage information with respect to, the COPS programs, any grant program carried out by OJP, and any other grant program carried out by DOJ that the Attorney General considers appropriate. This will include establishing and maintaining an automated information management system to track all grants. The Office of Audit, Assessment, and Management will report directly to the Office of the Assistant Attorney General for Justice Programs.

Section 1159. Community Capacity Development Office. Section 1159 creates a new Community Capacity Development Office within OJP. This office is authorized to provide training on a regional and local basis to actual and prospective participants in the COPS programs, any grant program carried out by OJP, and any other grant program carried out by DOJ that the Attorney General considers appropriate. The Office will also identify best practices for grantees and incorporate such practices into its training. Not to exceed 5% of the funding for each program shall be reserved to fund the office.

Section 1160. Division of Applied Law Enforcement Technology. Section 1160 creates a Division of Applied Law Enforcement Technology within the Office of Science and Technology headed by an individual appointed by the Attorney General. This division will ensure that grant moneys provided to law enforcement for computer systems will be spent for equipment and

software that is of good quality and suitable to support. The division also will provide leadership and focus so that grants that are made for using or improving law enforcement computer systems and ensuring that recipients of such grants use such systems to participate in crime reporting programs administered by the Department.

Section 1161. Availability of Funds for Grants. Section 1161 provides that unless otherwise specifically provided by an authorizing statute, money appropriated for grants in fiscal year 2004 and any subsequent fiscal year shall remain available to be awarded and distributed to grantees for the year appropriated and three subsequent fiscal years. If the money is reprogrammed, the time period begins again. It further provides that money distributed to grantees must be spent within the time period provided by the grant. In either case, money not meeting the requirement shall revert to the Treasury.

Section 1162. Consolidation of Financial Management Systems of Office of Justice Programs. Section 1162 requires the Assistant Attorney General of the Office of Justice Programs to make two significant financial management reforms: (1) consolidate all accounting activities of OJP into a single financial management system under the direct management of the Office of the Comptroller by September 30, 2010, and (2) consolidate all procurement activities of OJP into a single procurement system under the direct management of the Office of Administration by September 30, 2008.

Section 1163. Authorization and Change of COPS Program to Single Grant Program. This section reauthorizes the Community Oriented Policing Program and consolidates the program into a single grant. States and local governments may continue to apply for the funds for a number of different purpose areas to allow flexibility in the use of grants.

Section 1164. Clarification of Persons Eligible for Benefits Under Public Safety Officers' Benefits programs. This section makes technical amendments to the PSOB program to ensure that it is properly applied and corrects a problem in current law that would allow payments to be made to multiple beneficiaries on behalf of one officer. The section also requires law enforcement agencies to keep confidential officer beneficiary and insurance information.

Section 1165. Pre-Release and Post-Release Programs for Juvenile Offenders. Section 1165 permits States to use Juvenile Justice Accountability Block Grant funds to establish, improve and coordinate pre- and post-release programs to facilitate successful juvenile re-entry into the local community.

Section 1166. Reauthorization of the Juvenile Accountability Block Grants. This section reauthorizes the JABG program through 2009.

Section 1167. Sex Offender Management. This section reauthorizes through 2010 a program to track sex offenders and encourage states to effectively monitor them upon release from prison.

Section 1168. Evidence-Based Approaches. Section 1168 permits the use of evidence-based approaches when utilizing certain grants under the Omnibus Crime Control and Safe Streets Act of 1968.

Section 1169. Reauthorization of School Security Matching Grant. Section 1169 reauthorizes until 2009 the School Security Matching Grant program and consolidates the program under the COPS Office.

Section 1170. Technical Amendments to Aimee's Law. Section 2420 makes certain corrections to Aimee's Law, including: 1) tying enforcement mechanisms to statistical national averages and actually-available data; 2) encouraging states to collect certain data to allow further implementation of the law; 3) clarifying that States will receive \$10,000 for prosecution and apprehension costs and \$11,500 per year for up to five years for incarceration costs; and 4) providing the Attorney General with regulatory flexibility to administer the law.

Subtitle C—Miscellaneous Amendments to Title 18 and Related Laws

Section 1171. Technical Amendments to Title 18. Section 1171 makes a series of technical amendments to provisions in Title 18.

Section 1172. Miscellaneous Technical Amendments. Section 1172 makes a series of technical amendments to Title 18 and Title 28, and it also repeals a duplicative authorization of a sexual abuse prevention program for runaway children, which has recently been reauthorized in another statute.

Section 1173. Use of Federal Training Facilities. Section 1173 is intended to ensure that the Justice Department uses the most cost-effective training and meeting facilities for its employees. For any predominantly internal training or conference meeting, subsection (a) requires the Justice Department to use only a facility that does not require a payment to a private entity for the use of such facility, unless authorized in writing by the Attorney General, or if so delegated, the Assistant Attorney General for Administration. Subsection (b) requires the Attorney General to prepare an annual report to the Chairmen and Ranking Members of the House and Senate Judiciary Committees that details each training or conference meeting requiring authorization under subsection (a). The report must include an explanation of why the facility was chosen and a list of any expenditures incurred in excess of the cost of conducting the training or meeting at a facility that did not require such authorization.

Section 1174. Privacy Officer. Section 1174 is intended to ensure that the Justice Department safeguards personally identifiable information and complies with fair information practices pursuant to 5 U.S.C. § 552a. Subsection (a) requires the Attorney General to designate a senior official with primary responsibility for privacy policy. Subsection (b) specifies the responsibilities of such official. Subsection (c) requires the privacy official prepare a report to the Attorney General and House and Senate Judiciary Committees describing the privacy organization and resources of the Department and related information management functions. Subsection (d) requires the privacy official to report annually to the Committees on the Judiciary on certain matters.

Section 1175. Bankruptcy Crimes. Section 1175 requires the Director of the Executive Office for United States Trustees to prepare an annual report to the Congress detailing: (1) the number and types of criminal referrals made by the Program; (2) the outcomes of each criminal referral;

(3) any decrease in the number of criminal referrals from the previous year; and (4) the Program's efforts to prevent bankruptcy fraud and abuse, particularly with respect to a debtor's failure to disclose assets.

Section 1176. Report to Congress on Status of United States Persons or Residents Detained on Suspicion of Terrorism. Section 1176 requires the Attorney General to submit an annual report to Congress specifying the number of United States persons or residents detained on suspicion of terrorism.

Section 1177. Increased Penalties and Expanded Jurisdiction for Sexual Abuse Offenses in Correctional Facilities. This section increases penalties under Title 18 for sexual abuse by personnel of any individual in the custody of the Bureau of Prisons.

Section 1178. Expanded Jurisdiction for Contraband Offenses in Correctional Facilities. This section expands the prohibition and penalties in Title 18 for bringing contraband into a prison to include any detention facility or institution under the direction of the Attorney General.

Section 1179. Magistrate Judge's Authority to Continue a Preliminary Hearing. This section amends current law to clarify that either a district judge or a magistrate judge may extend the time limits for a preliminary hearing. It maintains the requirement that such extension may be granted only upon a showing of extraordinary circumstances and that justice requires delay.

Section 1180. Technical Corrections Related to Steroids. This section makes technical corrections to the names of two chemicals which were included in the "Anabolic Steroid Control Act of 2004."

Section 1181. Prison Rape Commission Extension. This section extends for one year the time for the Prison Rape Commission to provide a report to Congress on its findings.

Section 1182. Longer Statute of Limitations for Human-Trafficking Related Offenses. This section extends the statute of limitations for human trafficking related offenses under Title 18 to ten years after the commission of the offense.

Section 1183. Use of Center for Criminal Justice Technology. This section authorizes the Attorney general to make grants to the Center for Criminal Justice Technology to provide technology assistance and expertise to the criminal justice community.

Section 1184. SEARCH Grants. This section authorizes the Attorney General to make grants to the National Consortium for Justice Information and Statistics to carry out the operations of the National Technical Assistance and Training Program, and authorizes \$4 million per year from FY06-09.

Section 1185. Reauthorization of Law Enforcement Tribute Act. Section 1185 reauthorizes the Law Enforcement Tribute Act through 2009.

Section 1186. Bullying and Gangs. Section 1186 permits Juvenile Justice Accountability

Block Grant funds to be used for accountability-based programs to enhance school safety, including reduction of bullying, cyber-bullying and gang activity.

Section 1187. Transfer of ATFE Provisions. This section makes clerical changes to the Code and transfers certain provisions related to ATFE from the Homeland Security Act to authorities related to the Department of Justice.

Section 1188. GREAT Program. This section reauthorizes the Gang Resistance Education and Training (GREAT) Program at \$20 million per year through 2010.

Section 1189. National Training Center. This section authorizes the Attorney General to use the National Training Center in Sioux City, Iowa to utilize a national approach to bring communities and criminal justice agencies together to receive training to address and control the growing problem of methamphetamine, poly drugs and associated crimes.

Section 1190. Sense of Congress Regarding Good Time Release. Section 1190 expresses the sense of Congress that it is important to study the concept of implementing good time release policies in the federal prison system.

Section 1191. Public Employee Uniforms. Section 1191 amends 18 U.S.C. § 716 to include official uniforms and insignia (including police badges) in the prohibition on the purchase and use of such items for improper purposes. Provides several defenses, including that the uniform or insignia is not used or intended to be used to mislead or deceive.

Section 1192. Officially-Approved Postage. Amends 18 U.S.C. § 475 to clarify that nothing in the section applies to evidence of postage payment approved by the United States Postal Service.

Section 1193. American Prosecutors Research Institute. Section 1193 authorizes \$7.5 million per year from FY06-10 for the American Prosecutors Research Institute.

Section 1194. Assistance to Courts. Section 1194 encourages the Chief Judge of each United States district court to cooperate with requests from State and local authorities whose operations have been significantly disrupted as a result of Hurricanes Katrina and Rita.

Section 1195. Study on Correlation Between Substance Abuse and Domestic Violence. Section 1195 authorizes the Secretary of Health and Human Services to carry out a study and report to Congress to determine the correlation between drug and alcohol abuse and domestic violence.

Section 1196. SCAAP Reauthorization. Section 1196 reauthorizes the State Criminal Alien Assistance Program from FY06-11 at the following levels: FY06 \$750,000,000; FY07 \$850,000,000; FY08-11 \$950,000,000. This section also authorizes the Inspector General of the Department of Justice to conduct a study and report to the Judiciary Committees regarding State compliance with certain provisions of the Immigration and Nationality Act and IIRIRA of 1996.

Section 1197. Extension of PROTECT Act Child Safety Program. Section 1197 reauthorizes

the PROTECT Act's background check pilot project and expands the number of checks and entities eligible to participate in the program.

Section 1198. Transportation and Subsistence for Special Sessions of District Court.

Section 1198 authorizes the United States marshal of a district where a federal court is meeting in special session due to emergency as necessary to furnish transportation and subsistence to witnesses and defendants in the same manner as required to be provided to indigent defendants under title 18.

Section 1199. Youth Violence Demonstration Projects. Section 1199 authorizes the Attorney General to make up to five competitive grants to units of local governments to carry out demonstration projects designed to reduce juvenile and young adult violence, homicides and recidivism among high-risk populations.

Sexual Violence Prevention Curriculum

Presenter: Raquelle Myers / The National Indian Justice Center

Description: The National Indian Justice Center has created a sexual violence and intimate partner violence prevention curriculum. This workshop reviewed the scope of that curriculum providing highlights of current statistics, effective strategies and common themes among tribal communities in response to sexual violence prevention

Commentary:

In its study on violence and health the World Health Organization states that sexual violence encompasses a wide range of acts, including coerced sex in marriage and dating relationships, rape by strangers, systematic rape during armed conflict, sexual harassment (including demands for sexual favors in return for jobs or school grades), sexual abuse of children, forced prostitution and sexual trafficking, child marriage, and violent acts against the sexual integrity of women, including female genital mutilation and obligatory inspections for virginity. Women and men may also be raped in police custody or in prison.

Sexual assault and the ability of society to prevent it requires enormous commitment by tribal officials. A comprehensive curriculum must be implemented effectively. Sexual assault is a problem of great dimensions.

Section 2—Defining Violence in Tribal Communities

What is Sexual Violence?

Sexual Violence (SV) refers to sexual activity where consent is not obtained or freely given. Anyone can experience SV. Most victims are female and some are male. The person responsible for the violence is typically male and is usually someone known to the victim. The person can be, but is not limited to, a friend, coworker, neighbor, or family member. There are many types of SV. Not all include physical contact between the victim and the perpetrator (person who harms someone else). Examples include sexual harassment, threats, intimidation, peeping, and taking nude photos. Other SV, including unwanted touching and rape, does include physical contact. [1]

What is Intimate Partner Violence?

Intimate Partner Violence (IPV) is abuse that occurs between two people in a close relationship. The term “intimate partner” includes current and former spouses and dating partners. IPV exists along a continuum from a single episode of violence to ongoing battering.

IPV includes four types of behavior:

- **Physical abuse** is when a person hurts or tries to hurt a partner by hitting, kicking, burning, or other physical force.
- **Sexual abuse** is forcing a partner to take part in a sex act when the partner does not consent.
- **Threats** of physical or sexual abuse include

the use of words, gestures, weapons, or other means to communicate the intent to cause harm.

- **Emotional abuse** is threatening a partner or his or her possessions or loved ones, or harming a partner’s sense of self-worth. Examples are stalking, name calling, intimidation, or not letting a partner see friends and family.

Often, IPV starts with emotional abuse. This behavior can progress to physical or sexual assault. Several types of IPV may occur together.

SV/IPV Statistics for 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). Pamphlet produced by the National Sexual Violence Resource Center.
- Persons of a different races/ethnicities commit 70% of violence against American Indians. Greenfeld, Lawrence A. & Smith, Steven K. *American Indians and Crime*, Bureau of Justice Statistics, Office of Justice, Department of Justice, February 1999



Section 2—Defining Violence in Tribal Communities

NCJ173386.

- **A 1999 Bureau of Justice Statistics report revealed that the annual violent crime rate among American Indians is 2.5 times the national rate.** A large portion of the violence has been directed toward women, with one third of victims between the ages of 18 and 24. Greenfeld, Lawrence A. & Smith, Steven K. *American Indians and Crime*, Bureau of Justice Statistics, Office of Justice, Department of Justice, February 1999 NCJ173386.
- **The average annual rate of sexual assault among Native Americans is 3.5 times higher than for all other races.** Greenfeld, Lawrence A. & Smith, Steven K. *American Indians and Crime*, Bureau of Justice Statistics, Office of Justice, Department of Justice, February 1999 NCJ173386.
- **The rate of sexual assault among American Indians was 7.7 of every 1,000 in the year 2000. This is a rating of 6.2 higher at the minimum than all other racial/ethnic groups.** Bureau of Justice Statistics (2001). BJS 202/307-0784. Washington D.C.: U.S. Department of Justice.
- **As reported by the National Violence Against Women Survey, there is a 15.9% victimization rate of American Indians/Alaskan Natives by an intimate partner.** Tjaden, Patricia & Thoennes, Nancy. *Research in Brief: Prevalence, Incidence and Consequences of Violence Against Women: Findings From the National Violence Against Women Survey*, NIJ, Centers for Disease Control and Prevention, November 1998.
- **In 1999 the Federal Bureau of Investigation (FBI) ranked Alaska number one in the United States for rape, making Alaska first in that crime category for two thirds of the past two decades.** Pemberton, Mary. "Police, Native Groups Working Together to Reduce Rapes," *Associated Press*, September 25, 2000. Anchorage, AK.
- **Sexual assault by an intimate partner is more frequent among American Indians than among other racial/ethnic groups.** Rennison, C.M. & Welchans, S. (2000). *Intimate Partner Violence Special Report*, NCJ 178247. Washington, D.C.: U.S. Department of Justice.
- **75% of Native American women interviewed in shelters for battered women noted that the sexual assault perpetrator had been drinking before the incident occurred.** Bachmann, R. (1992). *Death and Violence on the Reservation: Homicide, Family Violence, and Suicide in American Indian Populations*. CT: Auburn House.
- **At least 70% of assaults experienced by Native Americans are committed by someone of a different race.** However, the majority of assaults experienced by other racial/ethnic groups are committed by someone of the same race or ethnicity. *Sexual Assault in Indian Country: Con-*



Section 2—Defining Violence in Tribal Communities

fronting Sexual Violence (2000). Pamphlet produced by the National Sexual Violence Resource Center. [3]

- [1] Understanding Sexual Violence Fact Sheet, 2007, Centers for Disease Control and Prevention (CDC), <http://www.CDC.gov>.
- [2] Understanding Intimate Partner Violence Fact Sheet, 2006, CDC, <http://www.CDC.gov>.
- [3] Sexual Violence and Communities of Color, Wisconsin Sexual Assault Coalition, Information Sheet Series, <http://www.wcasa.org/docs/communities%20of%20color.pdf>



Section 5

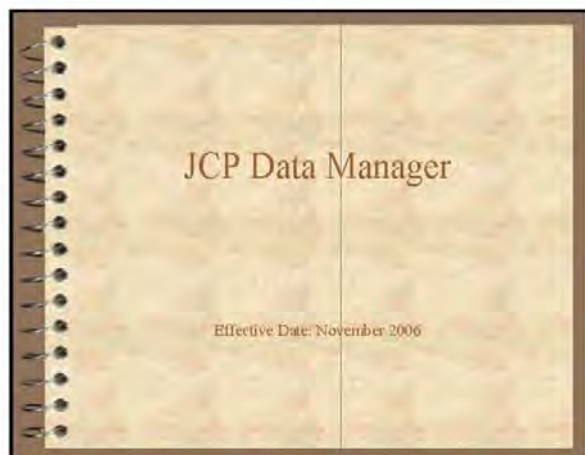


***Improving the Community
Response to SV/IPV***





Section 5—Improving Community Services' Response to Violence



What is it and What does it do?

- The JCP System is set up to provide counties and tribes access to enter and manage youth data. There are three current tools in the system:
 - The Profile Manager Plus - Manages user profiles and access to the system
 - JCP Data Manager - System that collects and reports on youth demographic, assessment and program data.
 - Section Editor Plus - Manages the sections (programs) that exist within your county/tribe.

The Profile Manager

- There will be three levels of access in the JCP system:
 - Contact List Only
 - Power-users
 - Super-users

Profile Manager - Contact List only

- **Contact List only** - These are people who do not directly enter youth into the system or log in but will need to be listed in the system on reference lists. Typically, these are screeners who may perform a screen but do not enter the information or otherwise need access into the system. Screeners in a program/section must be added to the system so they can be properly referenced in the assessment form in the data manager as well as given “credit” for the screen. The lead JCP agency is responsible for managing the profiles of their providers.

Profile Manager - Power-users

- **Power-user** – Personnel in the lead agencies who need to access the system for reports, data entry, or managing the profiles of the users. *For now, nearly all users who use the JCP Data Manager will be power users.*

Profile Manager - Super-users

- **Super-user** – Super users have the same basic capabilities as the power users but have one main difference – Super users can edit any assessment regardless of the screen date. There will be one or two designated super users per county - usually the JCP program coordinator and the data entry specialist.



Section 5—Improving Community Services' Response to Violence

Profile Manager

The process for access to the system -

- Super users in the county set up and maintain user profiles (JCP Web Support will set up initial super user profiles) for the coordinator and data entry specialist. JCP Web Support will review the information and how to use the Profile Editor plus individually by phone.
- After the supervisor/user enter the information into the system, it will automatically be transmitted to JCP Web Support for activation.
- JCP Web Support will activate the users and assign rights and tools to the program. This action will be followed up by an email to the newly activated user.

Profile Manager



For data integrity, users are not allowed to share a login name. Users sharing logins will eventually be rejected from the system - not to be reactivated. Additionally, mistakes or issues with data entry using shared logins will point to the login's original "owner".

Each person who will be entering data into the system will need a login and a password.

Getting into the System



- Type in your Login Name and hit Enter (for added security). Using the mouse or Tab will not work. You may also press CONTINUE.
- Type in your Password and hit Enter (or click continue)

Profile Editor

JCP Tools		
Tool	Description	From: From: To: To:
Reports	View static documents and reports (static).	From: From: To: To:
Data Manager	Enter assessments and service information.	From: From: To: To:
Profile Editor Plus	Administrate staff profiles existing in your county.	From: From: To: To:
Section Editor Plus	Allows you to edit the profiles of all of the sections in your county.	From: From: To: To:

Click on the Profile Editor Plus

Profile Editor



- The first screen is a summary screen showing all of your active logins in your section. To edit an existing login, simply click on the radio button and press MODIFY (above in the toolbar). To Add a new login, click on ADD.

Profile Editor - Add




The format of the add/edit pages in the system are all similar to each other. At the top, you the option of going back to the main menu (<< MAIN MENU), closing the current screen (CLOSE) and returning to the summary report without saving, saving data and returning to the summary report (SAVE), or pasting from another field/document.




Section 5—Improving Community Services' Response to Violence

Profile Editor - Add



You will also notice the icons in the top right corner. The "letter" icon will email JCP Web Support. The "I" icon provides information who created the product. The "F" icon contains system help. The C-Site icon indicates a federal copyright.

Profile Editor - Add

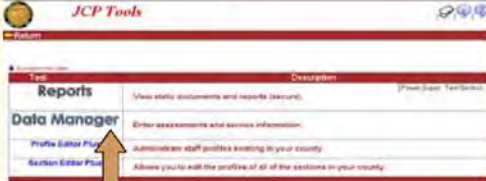


Four callout boxes with arrows pointing to specific fields in the form: 'Name of system field', 'Field description and instructions', 'Data entry field', and 'Optional buttons help populate data in the field'.

Profile Editor - Save


- Each field needs to have something in the field. (field help will indicate if "0" is appropriate). In most cases, zeros are only used if there is no response. They are the equivalent of entering "nothing"
- If you try to close the screen without saving your data and you've entered information in the first field, a warning message will prompt you to save or leave and lose changes.
- Once you Save your data and close, you will not see the staff profile that you'd just entered into the system because this person has not yet been activated. The information is automatically transmitted to JCP Web Support who will need to activate the users.

JCP Data Manager



From the menu, click on Data Manager

JCP Data Manager



This is the JCP Data Manager Main Menu. Helpful information about the system is listed in the center. Menu options are listed on the left side. To access a module, you can click on a button or use the shortcut keys (Alt + underlined Letter). Shortcut keys are available throughout the system.

JCP Data Manager - Search




Doing an initial Search ensures a youth will not be duplicated in your tribe. The Search will display all youth assessed (screened) in your tribe. You may want to copy the Client ID as it will be used on other data screens. The  icon is a search button. By clicking on the glasses, a search dialog box will appear for that field.



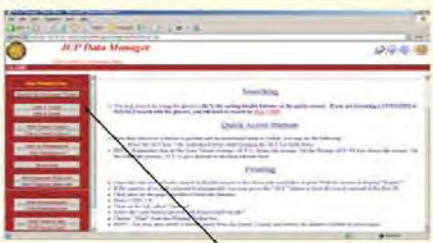
Section 5—Improving Community Services' Response to Violence

JCP Data Manager - Search



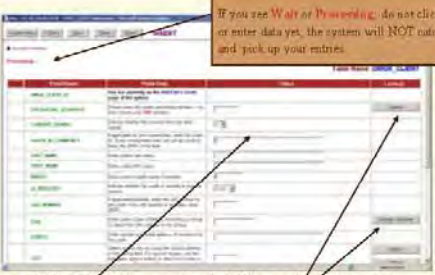
You must search in ALL CAPS. Use the CONTAINS method if you want to see results that contain a string of letters (ie: MOU). This can be used if you are not sure of exact spelling. Use the EQUALS radio button if you are sure of spelling and desire faster search results (ie: MOUSE). Click on OK to view results. If a match for your youth is not in the system, go to the main menu to Add a Youth. If you have entered data for a youth, but not an assessment yet, you may find the client in "edit a youth" or "edit youth's characteristics".

Initial Assessments - Add A Youth



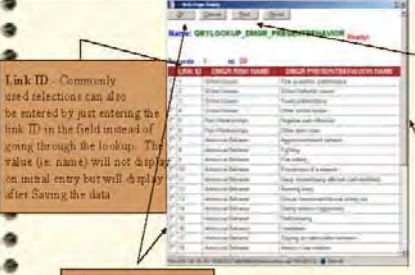
From the main menu, select Add a Youth. After clicking, it may take up to 30 seconds to load the page depending on your connection speed.

Initial Assessment - Add a Youth



Like the Profile Manager, the field titles are the same. Each value field will need an entry. The Options buttons will assist you in populating the fields.

JCP Data Manager - More on Options



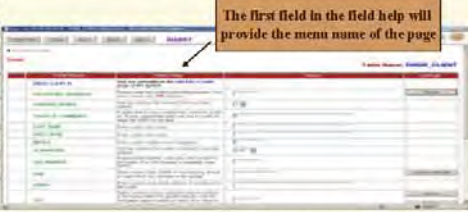
Link ID - Commonly used selections can also be entered by just entering the link ID in the field instead of going through the lookup. The value (ie: name) will not display on initial entry but will display after saving the data.

If the list is long, you can also use Find to prompt a search.

Look for the scroll bar to find more options.


After making the selection, Click on OK or Alt + O to insert the value.

Initial Assessment - Add a Youth



Once you have completed all of the fields, click on SAVE to save your data and proceed to the next page. Clicking on CLOSE or NEXT will not save your data automatically.

Initial Assessment - Add Youth Characteristics



Adding a youth produces a client ID. This ID needs to be matched to the data on this page of the system. To find the Client ID, use one of the three Options buttons (For quickest results - use the lowest button for youth entered today. The middle button will display youth entered in the last five days, and the top button displays all youth ever entered under your tribe.



Section 5—Improving Community Services' Response to Violence

Initial Assessment - Add Youth's Characteristics



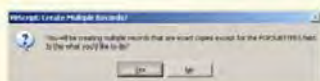
Click on OPTIONS in the POPSUBTYPES field to display all necessary entries. Be sure to select at least one gender, one language and one ethnicity. More than one type in each can be selected if necessary.

Initial Assessment - Add a Youth's Characteristics



Remember to select ALL characteristics that apply, then press OK. Note the scroll bar on the right side to make sure you have seen all options. If you select any "other" category, you will need to fill in the corresponding field on the Add Youth's Characteristics page.

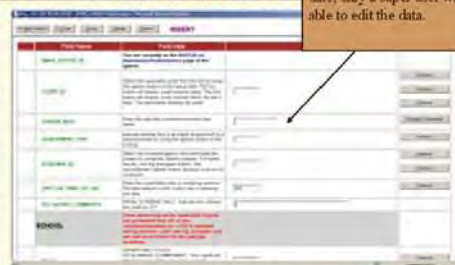
Initial Assessment - Add Youth's Characteristics



After entering data and hitting **SAVE**, you should see this prompt. You should always see this particular prompt on this page because you have selected at least one gender, one language, and one ethnicity for the client. If you need to change any of the selections, you can always go back to the options button and select the items. If you would like to proceed, click on Yes or press ENTER.

Initial Assessment - Add an Assessment

If the screen date is over 30 days from the current date, only a super user will be able to edit the data.



The assessment page contains a significant amount of fields and information and may take a moment to load.

Initial Assessment - Add an Assessment



Each field will need to be completed. Selections can be made from the Options menu.

Initial Assessment - Add an Assessment



The options are the same for each question. Just click on the appropriate response and click on **Ok**. Also, instead of using the lookup, you can also just enter 1, 2, or 3 in the field. But be aware, if you enter the # incorrectly, the system will not prompt you of an error.



Section 5—Improving Community Services' Response to Violence

Initial Assessment -Assessment Report



After entering data in all fields and clicking on Save, the system will automatically take you to the assessment report to review the youth's score. To edit data, simply click in the radio button by the youth and click on Modify. **If the original screen date is over 30 days, you will not be able to view the report here.** You will need to go through the main menu to View Reports - View/Edit All Youth. The report only displays for the super user.

Initial Assessment - Add Program Referrals



This is the final part of entering the initial assessment. You will need to go through the main menu and select Add Program Referral. You must complete this step to finish the process.

Initial Assessments - Program Referral



Instead of selecting a client ID, you will need to select the applicable initial assessment for the youth using the options buttons.

Add Program referral assessment lookup



Find the youth/assessment, click in the box and click on OK to finish the initial assessment.

REASSESSMENTS - Add a Reassessment



- Select the client by using the options buttons.
- The table is exactly the same as the initial assessment. The key difference is the ASSESSMENT_TYPE. Ensure that you select "Reassessment" from the Assessment Type options button rather than "Initial".

Reassessments - Add Service Info



After clicking on SAVE from Add a Reassessment module, the Add Service Info page will automatically load.



Section 5—Improving Community Services' Response to Violence

Reassessments - Add Risk Focus Area



After clicking on SAVE from Add Service Info, the Add Risk Focus Area page will automatically load. This is the last page!!

JCP Data Manager - View Reports



View Reports



At this time, only the first three reports are functional.


The first shows youth that has been assessed within the last 30 days and is editable. The second shows all assessed youth in the county - ever. The last - available only to super users - allows editing of assessments regardless of time frame.

Querying Functions

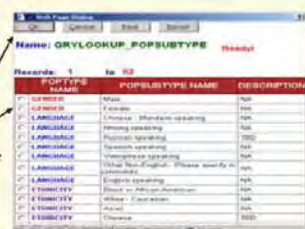
One of the system's main features is it's ability to report on data. You can run queries on the data to find out how many youth were served, what kind of characteristics they had/have, what programs they were referred to, if there was a change in risk score, etc, etc, etc!!

Simple Querying



Let's say you want to find out how many males were served in your program. Simply, click on the  which will bring up a search dialog box.

Simple Querying



Click in the radio button by Male and click on OK



Section 5—Improving Community Services' Response to Violence

Simple Querying

In this example, there were 15 males served in the county. To reset and change the view back to the original view, click on Reset in the button bar or press F5 on your keyboard.

Querying - more complex

From time to time, a more complex query is needed. Lets say you want to find out if the youth "Zippity Doodah" has already been assessed in your county (from the Search Screened Youth module).

Querying - more complex

Basically, what you are trying to tell the database to do is: "Give me all fields (sometimes called columns) from a table where a specific field name (or column) equals a specific value."

Recap of steps

1. Clear the screen (if necessary) using F5, CLEAR, or the RESET button.
2. Press the SELECT button from the query buttons (far upper right).
3. Press *. (everything). It will fill in the table's name automatically
4. Press WHERE.
5. Press the white caret directly above the column name "FIRST_NAME".
6. Press "=".
7. Double-click on a value in a cell under the FIRST_NAME column.
8. Confirm that the value is now in your query.
9. Press SEARCH.

* Note that you can add on other criteria by using the "AND" button if you want to restrict your query even more.

How to Query - more complex

In the Query Creator box, you will see something like:
SELECT * FROM "VW_DMGR_SEARCH" WHERE "FIRST" = 'ZIPPITY A' AND ("SECTION_ID" = 137730 OR ("SECTION_ID" = 0))
* Note that the section_ID text is automatically added.

How to Query - more complex

This gives you all of the information associated with Zippity A Doodah.



Section 5—Improving Community Services' Response to Violence

Strengths-based approach/Youth competency development overview

Strengths and competency approaches are

- ❑ Scientifically grounded
- ❑ Related to restorative justice approach
- ❑ Based on research related to assets, protective factors, resiliency
- ❑ Ecological – taking into account the youth in her/his environment
- ❑ Attentive to diversity
- ❑ Based on behavioral science – people with hope and support change more effectively
- ❑ Compatible with research on adolescent development – youth are changing rapidly, testing and creating an identity, and growing in their moral development

Philosophy

- ❑ People (especially young people) can change
- ❑ Youth should leave system better off than they entered
- ❑ Service plan should include support from natural helpers and engage community partners
- ❑ Relationships are key to success
- ❑ There are strengths in every youth, family, and community
- ❑ Strengths are fuel for change
- ❑ Viewing youth, families, and communities as untapped (or under-tapped) resources allows for creativity in finding solutions to challenges

Youth Competency Assessment

- ❑ Developed to help balance collection of risks and needs during assessment and use of this information in service planning, intervention, and supervision
- ❑ Tool and process have three main goals. They help the youth
 - Repair harm and develop/strengthen pro-social norms and values
 - Create/strengthen a healthy identity
 - Build/strengthen connections with family, peers, and community
- ❑ The YCA increases strength-based practice and improves the use of positive non-verbal cues and positive interview atmosphere
- ❑ Staff report improved rapport with youth and families, increased job satisfaction, and increased staff morale

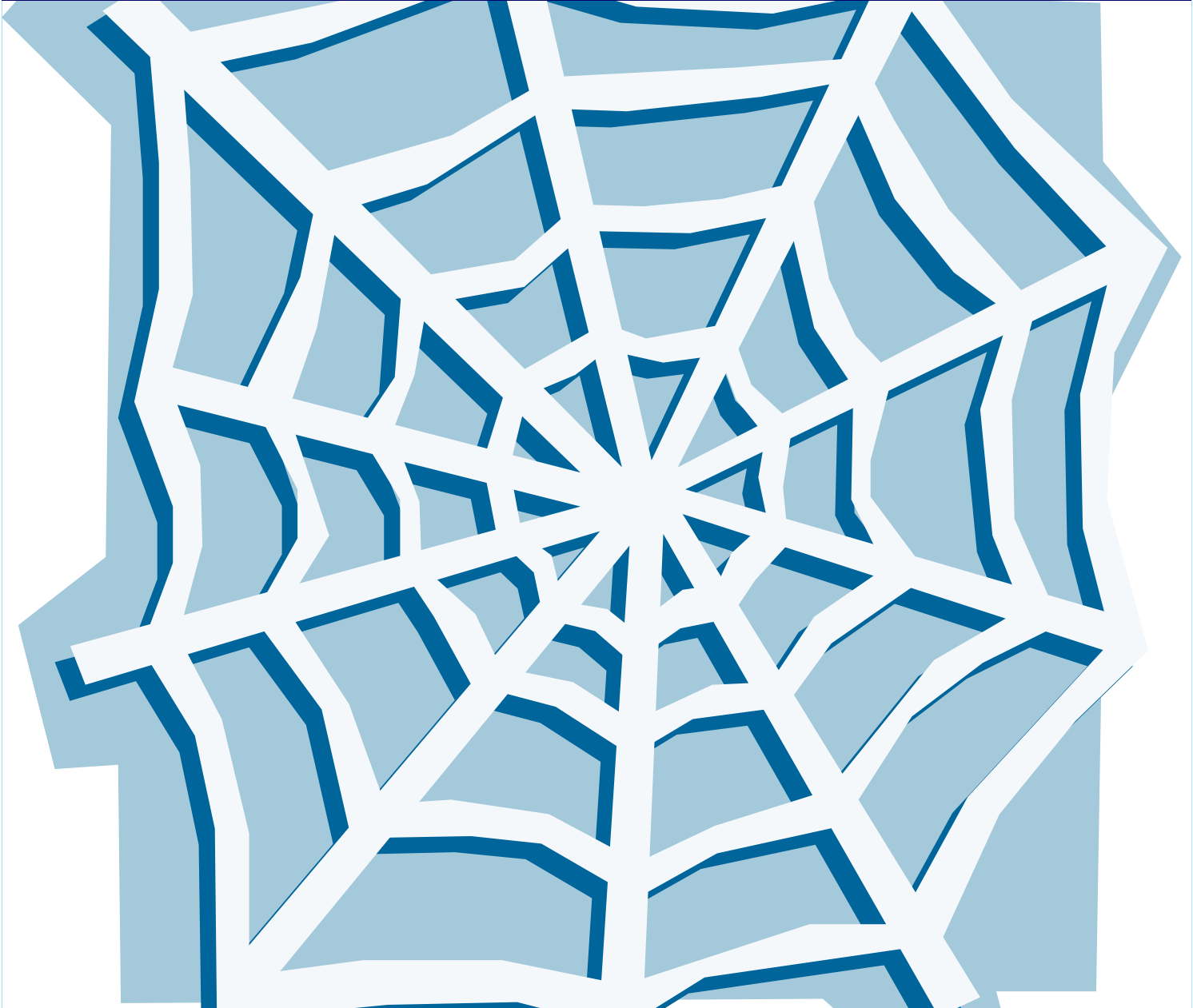
Competency development requires active participation by clients

- ❑ A focus on strengths builds engagement, which is crucial to success and change
- ❑ Accountability is increased
- ❑ Staff report quicker completion of court requirements and reduced need for detention and other sanctions

A strength-based approach is most effective when entire systems use it consistently. Judges, probation staff, treatment providers, schools, and other juvenile justice and community partners can all play a role in positive youth development.



Section 6



***Developing Tribal Code Provisions
that Address SV/IPV***





TRIBAL COURT JUDGES' BENCH GUIDE ON DOMESTIC VIOLENCE

I. HISTORY AND DEVELOPMENT OF THIS TRIBAL COURT JUDGES' BENCH GUIDE

This Bench Guide was developed by the National Indian Justice Center, Inc., a 100% Indian owned and operated training and technical assistance organization located in Santa Rosa, California, under a grant from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance (BJA).

The Bureau of Justice Assistance supports innovative programs that strengthen the Nation's criminal justice system. Its mission is to provide leadership and assistance in support of local criminal justice strategies to achieve safe communities. BJA's overall goals are to reduce and prevent crime, violence, and drug abuse and to improve the functioning of the criminal justice system. To achieve these goals, BJA programs emphasize enhanced coordination and cooperation of Federal, State, and local efforts.

One of the objectives of grant 95-DD-BX-0168 is to develop a Bench Guide for tribal court judges that informs, assists, and promotes effective disposition of domestic violence cases in Indian country. Effective judicial disposition of domestic violence cases requires that a judge be informed of the dynamics of domestic violence, aware of local victim services and shelters, and cognizant of the needs of others involved in the violence, such as children or the elderly.

II. SCOPE AND PURPOSE OF THIS BENCH GUIDE

This Bench Guide is provided to assist tribal court judges presiding over domestic violence cases. The main emphasis of this Bench Guide will be on cases where the batterer is the defendant. It is designed with the lay tribal court judge in mind and provides understandable issues and guides to assist tribal court judges faced with domestic violence issues such as protective orders, pretrial release, case disposition, preliminary hearings, trial issues, sentencing, and treatment.

Each tribal court must strive for internal consistency in its handling of domestic violence cases to assure that victims of domestic violence receive fair and equal treatment. Inconsistent or insensitive treatment of domestic violence cases causes further traumatization to the victim(s) of domestic violence. This type of injustice does not limit its harm to the family. It results in the destruction of tribal communities as a whole.

The problems associated with domestic violence require the attention and efforts of the entire community: law enforcement, social services, victim assistance programs, courts,



Section 6—Developing Tribal SV/IPV Code Provisions

schools, medical and psychological doctors, and service providers. The National Indian Justice Center (NIJC) provides a series of courses and materials on domestic violence in Indian country for judges, law enforcement, social services and victim assistance program personnel.

III. INTRODUCTION TO THE BENCH GUIDE

The U.S. Attorney General's Task Force on Family Violence, Final Report found the role of judges crucial in reducing the effects of domestic violence:

Judges should not underestimate their ability to influence the defendant's behavior. Even a stern admonishment from the bench can help to deter the defendant from future violence. . . .

Judges are the ultimate legal authority in the criminal justice system. If they fail to handle family violence cases with the appropriate judicial concern, the crime is trivialized and the victim receives no real protection or justice. Using the yardstick of the court to measure conduct, the attacker will perceive the crime as an insignificant offense. Consequently, he has no incentive to modify his behavior and continues to abuse with impunity. The investment in law enforcement services, shelter support and other victim assistance is wasted if the judiciary is not firm and supportive.¹

The role of judges in domestic violence cases cannot be overstated. A judge's behavior in and out of the courtroom can be determinative of the impact of sentencing upon the offender as well as the success of the victim's recovery.

Some jurisdictions have dedicated court sessions solely to domestic violence cases. In one courtroom model, a judge hears all misdemeanor domestic violence cases, probation violations arising from these cases, and regular progress reports from batterers on probation. The goal is that one court handles every step of a criminal domestic violence case, from arraignment to trial to sentencing, with regular and frequent judicial review hearing of the progress of the defendants. Such models have reported recidivism rates of only two to 3% among offenders who complete a batterer's treatment program and other conditions of each court's probation.

Such models would seem readily available in Indian country because most tribal courts operate with one or two judges handling the entire caseload. So why is domestic violence in Indian country unfettered by tribal court orders. One factor may be that many judges, in Indian country and elsewhere, lack an understanding of the dynamic of domestic violence and the impact of the judicial response upon the cycle of domestic violence.

The tribal court judiciary must make an effort to (1) understand the dynamics of domestic violence, (2) render consistent justice in domestic violence cases, and (3) learn about and coordinate with available victim assistance programs, shelters and other counseling programs for the men, women and children caught up in the cycle of domestic violence.



Section 6—Developing Tribal SV/IPV Code Provisions

IV. CONSISTENCY IN DOMESTIC VIOLENCE CASES

A. FEDERAL JURISDICTION OVER DOMESTIC VIOLENCE CASES

Federal domestic violence crimes are felonies. Some domestic violence cases involving Indians may be subject to federal jurisdiction. Such federal domestic violence crimes may be reported to federal authorities for federal prosecution.

Pursuant to the Violence Against Women Act,² (VAWA), it is a federal crime:

1. To enter or leave Indian country and physically injure an “intimate partner.”³
2. To enter or leave Indian country and violate a “qualifying” Protection Order.⁴

The protection order will “qualify” if due process was afforded for the defendant and the order forbids future threats of violence. Violations of VAWA provisions should be reported to the local Federal Bureau of Investigation Office.

Pursuant to the Gun Control Act, it is a federal crime:

1. To possess a firearm and/or ammunition while subject to a qualifying protection order.⁵
2. To possess a firearm and/or ammunition after conviction of a “qualifying” domestic violence misdemeanor.⁶

The misdemeanor will “qualify” if the conviction was for a crime committed by an intimate partner, parent or guardian of the victim that required the use or attempted use of physical force or the threatened use of a deadly weapon. Violations of the Gun Control Act should be reported to local Alcohol, Tobacco and Firearms Office.

B. INDIAN CIVIL RIGHTS ACT AND TRIBAL COURT CRIMINAL JURISDICTION

The Indian Civil Rights Act of 1968⁷ (ICRA) prohibits tribal governments from enacting or enforcing laws that violate the rights of any person, as enumerated in the legislation. While similar to the Bill of Rights in the U.S. Constitution, the ICRA differs in several ways. Application of the Indian Civil Rights Act to a criminal domestic violence case in tribal court will limit sentencing options to one year imprisonment and/or a fine up to \$5000.

In addition, tribal courts have no criminal jurisdiction over non-Indian offenders;⁸ however, federal jurisdiction may be asserted under the General Crimes Act⁹ or the Assimilative Crimes Act.¹⁰



Section 6—Developing Tribal SV/IPV Code Provisions

C. CONSISTENCY IN TRIBAL CODES

To effectively dispose of domestic violence cases, tribal codes must define the elements of the domestic violence offense(s) uniformly. The definitions of domestic violence should not vary from criminal code to family code, or evidence code to civil code. Some examples are as follows:

1. *Domestic violence* is abuse committed against an adult or a fully emancipated minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship.¹¹
2. A *traumatic condition* is a condition of the body such as a wound or external or internal injury, whether of a minor or serious nature, caused by a physical force.¹²
3. *Cohabitants* are two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may be considered include sexual relations between parties while sharing the same living quarters, sharing expenses and/or income, joint use or ownership of property, whether the parties hold themselves out to be husband and wife, and the continuity and length of the relationship.¹³
4. *Stalking* occurs when any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family.¹⁴
5. *Harassment* is a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose. This course of conduct must be such as would cause a reasonable person to suffer emotional distress and must actually cause substantial emotional distress to the person.¹⁵
6. A *terrorist threat* is a willful threat to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety.¹⁶

Tribal codes must be continuously reviewed and revised to avoid inconsistency between definitions of domestic violence and associated terms in civil and criminal codes. Inconsistencies in tribal codes will lead to inconsistent rulings, orders and sentencing in domestic violence cases. It will also give the appearance that domestic violence cases are not a priority for the court.

V. PROTECTION ORDERS DEFINED

Protective orders are the primary and most often used tools at a judge's disposal in a domestic violence case. Please review your tribal code to learn which types of orders are avail-



Section 6—Developing Tribal SV/IPV Code Provisions

able. If your code lacks any of the following types of order, the court or legislative body should suggest that the codes be modified to include such orders.

A. ORDERS OF PROTECTION

An order of protection may be granted either *ex parte* or after a hearing for the purpose of restraining a person from committing an act of domestic violence. Orders of protection may:

1. enjoin the defendant from committing an act of domestic violence;
2. grant exclusive use and possession of the parties' residence to plaintiff, if physical harm otherwise may result;
3. restrain the defendant from coming near the residence, place of employment, or school of the plaintiff or other designated persons; and
4. include any other relief necessary to protect the victim or other designated persons from harm.

Generally, an order of protection must be served within one year and is valid for a duration of six months after service of the original order unless renewed. Violation of the order may result in arrest and prosecution.

B. EMERGENCY ORDER OF PROTECTION

Another type of domestic violence order is the Emergency Order of Protection. An emergency order may:

1. restrain a person from threatening, molesting or injuring another party or minor child of the parties, and
2. exclude a person from the home of the party requesting the order.

Emergency orders are intended to be short in duration. Unless continued by the court, an emergency order is usually valid only until the close of the next day of judicial business following the day of issue. To assure immediate availability, some jurisdictions allow emergency orders to be issued by telephone.

C. INJUNCTION AGAINST HARASSMENT

This remedy may be invoked to prohibit harassment and thus is not limited to domestic violence cases. Indeed this device often is sought in connection with disputes between neighbors or between landlords and tenants. An injunction may:

1. enjoin either party from committing harassment,
2. restrain either or both parties from coming near the residence, place of employment or school of the other party; and



Section 6—Developing Tribal SV/IPv Code Provisions

3. grant any other relief necessary to protect the alleged victim or other specifically designated persons.

The primary feature of this order is that it may be directed to either party involved in the dispute.

D. POLICIES CONCERNING ISSUANCE OF PROTECTION ORDERS

Orders of protection must receive priority and must be heard as soon as possible, even if some scheduled matters would be interrupted. Mutual orders of protection should not be granted automatically. Issuance of an order must be based on plaintiff's demonstration that an act of domestic violence has been or may be committed or that good cause exists. If a defendant requests an order of protection from the plaintiff or in response to plaintiff's petition, defendant should enter a separate petition requesting the appropriate relief.

An order of protection must be issued if the specific statutory grounds are found to exist. The number of times that an order has been requested and/or quashed in the past should not alone provide a basis for denying a petition.

1. **Record Hearings on Orders of Protection**
All hearings on orders of protection should be recorded by tape recording or court reporting techniques. By recording these proceedings, courts may not have to grant requests for de novo hearings on filing of appeal, if so required. In addition, the parties will not be required to go through the rigors of additional hearings if proceedings are recorded initially.
2. **List Only One Defendant**
An order of protection should contain the name of only one defendant. Sometimes plaintiffs request relief against more than one person. A separate petition must be filed for each defendant. If an order of protection is not effective until served, listing multiple defendants on a single order could result in different service dates, hence inconsistent dates of effectiveness. Also, it is difficult for law enforcement agencies to determine if an order remains in effect when several service dates are applicable.
3. **Third Parties May Request Orders of Protection**
Some tribal codes and state laws permit a third party to request relief on behalf of a plaintiff, if the plaintiff is unable to make the request. After the request, the judge must determine if the third party is an appropriate requesting party for the plaintiff.
4. **Cross-Petitions**
Any defendant should be able to file a petition for an order of protection against a plaintiff who has petitioned for a similar order for protective relief. The new



Section 6—Developing Tribal SV/IPv Code Provisions

petition should be regarded as a separate action and a new case number should be assigned.

5. **Cross-Orders**
The court should consolidate hearings for conflicting orders, especially where orders give both parties exclusive use of a residence. Because any court may issue an order of protection, orders may be issued by different courts granting conflicting relief.
6. **Registration of Affidavits of Service and Order of Protection**
Each issuing court should register a certified copy of an order of protection and affidavit of service of process with local law enforcement in the jurisdiction in which the plaintiff resides. Registration should occur within twenty-four hours after the affidavit of service has been returned. Changes and modifications to a protective order should also be registered. Registration facilitates verification of the order by law enforcement.

VI. ISSUING ORDERS OF PROTECTION

The following is a simplified protocol for issuing an order of protection:

1. *Contact Plaintiff.* The judge should see and speak with the plaintiff (or appropriate third party).
2. *Verify Petition.* The petition must be verified. Verification may be accomplished by having the plaintiff sign and swear to the truth of the contents of the petition in front of a clerk or judge.
3. *Review Petition.* To determine whether the order should issue without further hearing, the court must review the petition, any other pleadings on file, and any evidence offered by the plaintiff. If the contents of the petition do not provide a specific statement, including dates of the domestic violence alleged, the judge shall obtain additional information to be added to the petition or indicate when granting the order that other facts were reviewed.
4. *Alternative Orders.* If the petition does not support the issuance of an order of protection, it may support an alternative order, such as injunction against harassment. The judge should explain the reasons that the original petition is denied. The plaintiff should immediately file for the alternative order or injunction. If the requirements for the issuance of an *ex parte* order or injunction have not been met, the judge should set a hearing within 10 days to determine if an order should issue.
5. *Content and Duration of the Order.* The plaintiff should be advised of the contents and the duration of the order. If your tribal code does not specify the duration, most codes require that the order is served within one year of its issuance. Once served, it may remain in effect for six months, unless renewed. A modified order may be effective for six months from the date of service of the original order.



Section 6—Developing Tribal SV/IPV Code Provisions

6. *Effective Date of the Order.* The plaintiff should be advised that the order is not effective until it is served. Plaintiff should be advised about any statutory limit on the number of times an order may be renewed.
7. *Certified Copies of the Order.* The plaintiff should be provided with a certified copy of the order. The plaintiff should be advised to carry the certified copy at all times. If a defendant is physically present with the plaintiff and has not yet been served, a law enforcement officer may be summoned and use the certified copy to effect service on the defendant. The plaintiff or appropriate third party also should be advised of the benefit of providing copies of the order to employers. Often an employer can alert law enforcement or the plaintiff, if the defendant appears on the work premises in violation of the order.
8. *Victim Safety.* The judge should advise the plaintiff that the order of protection does not guarantee safety. Safety of the victim should remain a concern for the court and for the victim's family.
9. *Plaintiff's Responsibilities.* The judge should advise the plaintiff that plaintiff must contact a law enforcement agency for any violation of the order of protection. Action cannot be taken without the report of the violation.

VII. MOTION TO QUASH OR MODIFY PRIOR TO HEARING

After the court grants an order of protection but before a defendant requests a hearing, it is not unusual for the plaintiff, or both parties, to request that the order be quashed or modified.

A. MOTIONS TO QUASH OR MODIFY

A judge should consider the following issues when ruling on a motion to quash:

1. **Plaintiff Personally Appears**
A motion to quash should not be granted unless the plaintiff personally appears. In order to insure that the plaintiff is not coerced into requesting that an order of protection be quashed, the plaintiff always should appear before the judge to justify the revocation or modification.
2. **Separating the Parties**
If the plaintiff and defendant appear jointly on a motion to quash or modify, and the defendant has not requested a hearing or entered an appearance, the court should hear the plaintiff's request to quash or modify without the defendant being present. This procedure will allow the judge and plaintiff to discuss the reasons for the request to quash or modify without the fear or intimidation.

VIII. RENEWAL OF ORDERS OF PROTECTION



Section 6—Developing Tribal SV/IPV Code Provisions

A judge should consider the following when deciding to renew an order of protection:

1. A new case number should be assigned.
2. A judge may grant the renewal of the order based on the facts of the original petition or on new facts, so long as the court determines that an act of domestic violence has or may be committed or other good cause exists.
3. The defendant must be receive new service of process.
4. Registration of the new Affidavit of Service is required to verify the effective date of the order.

IX. HEARINGS ON ORDERS OF PROTECTION

If the defendant is entitled to a hearing on the order of protection, the hearings on *ex parte* petitions must be held at the earliest possible time, especially where exclusive use of the residence is involved.

The following is a guide for hearings on orders of protection:

1. Ask the parties what issues are in contention.
2. Place the plaintiff under oath and ask for information supplementing the petition.
3. All hearings should be recorded to preserve the record.
4. Each party should be allowed an opportunity for cross-examination or questions should be directed to the judge to determine relevancy.
5. The judge must be sensitive to the safety of the parties. If there is a concern, a judge may request that a law enforcement officer be present in the courtroom during the hearing or escort a party after the proceeding. The defendant may be directed to remain in court after the plaintiff is excused.

X. MEDIATION AND TRADITIONAL DISPUTE RESOLUTION

Mediation is a process by which parties with equal bargaining positions voluntarily reach consensual agreement about a dispute. Cases of domestic violence are rarely resolved by mediation. Parties in domestic violence cases are often not in positions of equal power. The victim, quite often, has endured unreported abuse which results in the victim fearing the abuser.

Some jurisdictions use traditional forms of dispute resolution for domestic violence cases. Success is often dependent upon the level of community involvement in the resolution process. Such traditional forms of dispute resolution exist in specific tribal cultures and are difficult to transplant to other tribal cultures. Successful traditional dispute resolution in domestic violence cases requires community involvement which “outs” the perpetrator or makes their behavior common knowledge. Yet, this does not always result in minimizing or eliminating domestic violence. It may only result in minimizing the reporting of the abuse. Judges should



Section 6—Developing Tribal SV/IPV Code Provisions

review the success of their local traditional dispute resolution processes before directing domestic violence cases to them for resolution.

XI. RECIPROCITY OF STATE-TRIBAL COURT ORDERS

Domestic violence legislation is remedial, and the orders of either state or tribal courts should be enforced with the goal of providing maximum protection of victims.

1. Violence Against Women Act of 1994 ("VAWA").¹⁷ The cross-recognition and reciprocity provisions of VAWA (section 2265) provide for full faith and credit given to protection orders as follows:
 - a. **FULL FAITH AND CREDIT.** Any protection order issued that is consistent with subsection (b) of this section by the court of one state or Indian tribe (the issuing state or Indian tribe) shall be accorded full faith and credit by the court of another state or Indian tribe (the enforcing state or Indian tribe) and enforced as if it were the order of the enforcing state or tribe.
 - b. **PROTECTION ORDER.** A protection order issued by a state or tribal court is consistent with this subsection if:
 - i. such court has jurisdiction over the parties and matter under the law of such state or Indian tribe; and
 - ii. reasonable notice and opportunity to be heard is given to the person against whom the order is sought is 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 or tribal 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 or tribal 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:
 - i. no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or
 - ii. 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.



Section 6—Developing Tribal SV/IPV Code Provisions

Tribes in receipt of VAWA funding may be obligated to modify their tribal codes to reflect these provisions. Failure to modify tribal codes may lead to tribes failing to comply with grant requirements. Judges should learn if their tribe is in receipt of VAWA funds, obligated to change their codes and review their codes to determine if the tribe is in compliance.

XII. PRETRIAL RELEASE AND RECURRING VIOLENCE

Domestic violence tends to escalate in both frequency and severity over time. Research also suggests that domestic violence tends to escalate when the victim leaves the relationship. This research demonstrates that a history of domestic violence may be a reliable indicator that further violence will occur. In addition, it appears that the victim may be particularly vulnerable to re-assault during attempts to leave or to sever the relationship.

A report by the National Institute of Justice concluded that the victim is especially vulnerable to retaliation or threats by the defendant during the pretrial period.¹⁸ In view of these findings, the most important pretrial release consideration in domestic violence cases is the need to separate the parties and to protect the victim. Failure to do so may predictably result in recurring violence. For these reasons, many judges believe that the court should consider no bail in some cases, especially when there has been severe injury to the victim, a history of domestic violence, and threats of retaliation by the defendant. In most other cases, the court should set bail, reserving own recognizance release (OR) for exceptional cases only.

In all cases in which the threat of continued violence or potential intimidation exists, the court should seriously consider issuing stay away or no-contact orders to protect the victim irrespective of the defendant's custodial status. It is not uncommon for an incarcerated defendant to continue contacting the victim by mail, telephone, or through third parties. Nor is it uncommon for the victim to respond to the defendant. Yet, victims must have recourse to the courts if or when the defendant becomes abusive.

XIII. BAIL IN DOMESTIC VIOLENCE CASES

A. SETTING BAIL

Considerations in setting bail should include:

1. Defendant's previous criminal record,
2. Probability of his or her appearing at trial or hearing,
3. Seriousness of the offense charged, including the alleged injury to the victim,
4. Alleged threats to the victim or to a witness to the crime charged,
5. Alleged use weapon in the crime charged, and
6. Alleged use or possession of alcohol or a controlled substance by the defendant.



Section 6—Developing Tribal SV/IPV Code Provisions

B. GRANTING OR DENYING BAIL

In evaluating an alleged batterer's criminal record for the purposes of fixing bail, it is important to remember that the first domestic violence offense usually occurs long before the first arrest. It is also important to consider prior incident reports and arrests for domestic violence, as well as other types of crimes, even though they may not have resulted in convictions because of diversion or failure to prosecute, especially if such crimes involved weapons. Alcohol or drug abuse is another important factor to consider in granting or denying bail.

Another factor recognized as relevant to the bail question is the pregnancy of the victim. Studies have shown that a high percentage of battering occurs during pregnancy and involves blows to the victim's abdomen. Battered women become pregnant nearly twice as frequently as nonbattered women, and their pregnancies end in miscarriage or abortion much more frequently.¹⁹

C. CONSIDERATIONS FOR SETTING BAIL

- Prohibit release if incident involved serious injury or threat.
- Discretionary release if batterer's threats were not accompanied by violence.
- Notice to prosecutor.
- Protection of the community.
- Seriousness of offense charged.
- Weight of evidence against the defendant.
- Victim's injuries.
- Availability of weapons.
- Alleged use of a firearm or other deadly weapon.
- Alcohol abuse or substance abuse.
- Children involved as victims or witnesses.
- Alleged threats against victim or witness.
- Prior history of convictions, including domestic violence.
- Prior history of police incident reports or arrests not leading to convictions.
- Threat of flight to avoid prosecution.
- Mental condition, including suicide threats.
- General health.
- Military history.
- Employment status, duration, source of income.
- Residence, other than through victim.
- Probation/parole status.
- Bench warrant history.

D. RELEASE ON OWN RECOGNIZANCE

Discretionary release on own recognizance should be considered only after the judge has reviewed issues of safety of the victim and issuance of protective orders.

E. ISSUANCE OF STAY-AWAY ORDERS

Judges may impose conditions on bail or releases that restrict the defendant's access to the victim. If the parties are living together, the conditions on bail or release should require the



Section 6—Developing Tribal SV/IPV Code Provisions

defendant, not the victim, to stay away from the home. These conditions preserve the defendant's right to release, but also provide for the victim's safety.

The court should consider issuing a stay-away order in criminal domestic violence cases, even on the court's own motion. Domestic violence cases should be marked as such to alert the court as to the nature of the case. This marking is important because domestic violence cases may be charged as trespassing, disturbing the peace, or harassing phone calls. Judges should coordinate with the court administrator to develop an effective method of marking cases involving domestic violence.

Orders must be worded specifically because the party bound by an injunction must be able to determine from its terms what actions are prohibited or allowed. A defendant cannot be held guilty of contempt for violating an injunction that is uncertain or ambiguous.

F. CONTENT OF PROTECTION ORDER

1. Agents of Defendant Not Present Before the Court

Often in domestic violence cases, the defendant may ask relatives or others to discourage the victim or witness from testifying. If the code provides, the court may include in a stay-away order a provision prohibiting the defendant from directing others to contact the victim or witness for the purpose of discouraging testimony.

2. Retrieval of Defendant's Personal Belongings

Defendants may request permission to return to a residence they share with the victim to retrieve their belongings. The court may specify in the stay-away order that such visits are permitted only if conducted in the presence of a law enforcement officer by means of a civil stand-by order. The court may also state the specific time for retrieval of property. This minimizes the contact between the parties. Civil standbys are for limited periods of time and are a routine duty of law enforcement officers.

G. ISSUANCE OF STAY-AWAY ORDERS PROTECTING CHILDREN

Domestic violence cases often involve children as direct or indirect victims of abuse. Courts may be asked to issue stay-away orders to protect children who are indirectly threatened by the defendant's abusiveness. Defendants in domestic violence cases often threaten to abduct children, follow through with such threats, fight protracted custody battles, and otherwise use children to attempt to discourage victims from following through with the legal process.

1. When a Civil Order Conflicts with a Criminal Order

When a criminal domestic violence case comes to court, there may be civil custody or visitation orders already in effect. The criminal order may prohibit contact between the parties and/or exclude the defendant from the victim's residence which directly conflict with the civil orders. Criminal court judges should still consider issuing stay-away orders. The stay-away order is in effect as long the criminal case is pending. It may outlast the duration of the civil order. The general rule is that the more restrictive order should apply even where child custody



Section 6—Developing Tribal SV/IPV Code Provisions

or visitation are concerned.

H. MUTUAL STAY-AWAY ORDERS

The issuance of mutual stay-away orders is not appropriate in domestic violence cases. The criminal court lacks jurisdiction over the victim, who is not party to the criminal action. In state courts, when mutual stay-away orders have been considered in civil cases they have been held unconstitutional, unless there is evidence of abuse by the victim toward the defendant, and notice to the victim that such an order was being considered.

If considering a mutual stay-away order, the court must make detailed findings of fact that both parties acted primarily as aggressors and neither acted primarily in self-defense. The parties may not stipulate to waive these requirements.

I. ENFORCEMENT CONSIDERATIONS

Admonition from the bench send a strong message to the abuser that he is accountable for his actions and that the victim has the support and protection of the criminal justice system. But the judicial admonition is ineffective if the judge does not enforce the order.

1. Oral Versus Written Orders

To enforce a stay-away order, it is necessary to inform all relevant parties and agencies of the order's existence, duration, content, and consequences of violation. For this reason, the order should be issued orally and in writing. If the order is not in writing, the defendant, victims, witnesses, law enforcement officers, and others may not have proper notice of it.

2. Notice

A copy of the order should be given to each of the following:

- a. *Defendant and defendant's advocate.* The court should explain the order to the defendant in case the defendant is unable to read English or understand the form. An additional copy should be given to the defendant's advocate.
- b. *Prosecutor and victim(s).* Because the victim may not be present at the time the order is issued, the prosecutor can be asked to deliver and explain it to the victim. The victim should be told to call the police if the order is violated, and to report violations to the prosecutor and/or law enforcement.
- c. *Law enforcement* should keep copies of all restraining orders sent to them, including stay-away orders. The court clerk should deliver copies to local law enforcement agencies.

J. VIOLATION OF STAY-AWAY ORDERS

1. Enforcement When Victim Contacts Defendant



Section 6—Developing Tribal SV/IPV Code Provisions

If the victim initiates contact with the defendant during the duration of a stay-away order, she or he is not in contempt because the victim is not a party to the action or subject to the court's order. The victim cannot violate an order issued for her or his protection.

Irrespective of a victim's conduct, however, law enforcement should enforce stay-away orders. Whether the victim had actually contacted the defendant or allowed him to return should be irrelevant to the issue of enforcement.

2. Contempt

Most often, a person who willfully disobeys any process or order lawfully issued by a court is guilty of contempt of court. Some jurisdictions consider the following when determining if a defendant should be held in contempt:

- a. An order existed,
- b. Defendant knew of the order,
- c. Defendant failed to obey the order,
- d. Defendant had the ability to obey the order, and
- e. Defendant's failure was willful.

Contempt is a general intent crime. It is established by showing that the defendant intended to do the prohibited act.

XIV. GOALS OF CASE DISPOSITIONS

The goals of any dispositional alternative available to the court in domestic violence cases should be:

1. To stop the violence;
2. To protect the victim,
3. To protect the children, and other family members;
4. To protect the community;
5. To hold the batterer accountable for the violent conduct;
6. To rehabilitate the batterer;
7. To uphold the legislative intent to treat domestic violence as a serious crime; and
8. To provide restitution to the victim.

A comprehensive disposition of a domestic violence case requires knowledge of the dynamics of domestic abuse. Many factors may provide a fertile community in which domestic violence begins. However, the court's handling of domestic violence cases may be the greatest factor in eliminating domestic violence from Indian communities. If the court fails to provide strong and consistent rulings, the court becomes another institution which tolerates and condones domestic violence.

By the time a domestic violence case reaches the courtroom, there has often been a history of escalating violence. The offender may minimize or deny the violence, or may blame the victim for the violence.

Offenders as well as victims are often products of violent households or families. They have learned that violence is a means of asserting power and control over the victim. Such dy-



Section 6—Developing Tribal SV/IPV Code Provisions

namics result in relationships which are founded upon and accepting of certain levels of violence. It is not uncommon for a victim to refrain from asking for help until the violence has become unfathomable, unfamiliar or unrecognizable. In most cases, the victim must learn, for the first time, that no level of violence is acceptable in a healthy relationship. Quite often, courts and victim service personnel grow weary of victims who ask for help but return to the offender. We must reinforce in our words, our teachings and our rulings, and convey that no violence will be tolerated. If we fail to do so, we will perpetuate the violence.

XV. WHEN THE VICTIM REQUESTS DISMISSAL

Before dismissing domestic violence charges, the court should ascertain whether the victim has been coerced into requesting dismissal of the charges. At the hearing, the victim should be present. If possible, the defendant should be removed from the courtroom to reduce intimidation of the victim. After swearing in the victim, the court should ask whether the victim wants the charges dismissed, the reasons for the request, whether the defendant has threatened the victim, or if the victim fears the defendant for other reasons, and how the victim received the injuries alleged.

When it is unclear whether coercion is a factor in the victim's request for dismissal, the court may find it useful to continue the case for a period of hours or days to permit the victim to obtain information and counseling from a victim assistance program. Victim advocates can give support and information to the victim, and can assist in setting up a safety plan in case abuse reoccurs after returning to the defendant.

Courts should limit dismissals of domestic violence charges at the victim's request. Such dismissals may reinforce the belief that domestic violence is a private, non-criminal matter, and that the criminal justice system is not a resource for the victim in breaking the cycle of violence. If dismissals are granted, the message to the batterer and the victim is that the victim, not the criminal justice system, controls the case. This provides the batterer with less incentive to stop the violent behavior because he or she comes to see that criminal court action can be avoided through intimidation and control of the victim. If dismissals are not easily granted on the victim's request, the message is clear that domestic violence is an offense against the tribe.

When a court decides to dismiss, it should recommend that the defendant voluntarily seek help from a batterer's program and that the victim contact the tribal victim assistance program or shelter for information and support services. The court should clearly state to the batterer and the victim that, even though the current charges may be dropped, domestic violence is criminal behavior that will not be tolerated. The court should also state that if the violence reoccurs, the batterer will be treated more severely because the previous arrest will stay on the batterer's record. It is also recommended that the court tell the victim that she or he should not hesitate to call tribal or local police in the event of another assault.



Section 6—Developing Tribal SV/IPV Code Provisions

XVI. DOMESTIC VIOLENCE VICTIM-COUNSELOR PRIVILEGE

A. SCOPE OF THE VICTIM-COUNSELOR PRIVILEGE

Some jurisdictions have adopted a domestic violence victim-counselor privilege provision. The privilege protects confidential communications between the victim and the domestic violence counselor. The privilege authorizes the nondisclosure of a confidential communication between the victim and a domestic violence counselor.

B. DOMESTIC VIOLENCE COUNSELOR DEFINED

1. Victim Assistance Program Staff and Volunteers

A domestic violence counselor is defined as a person who is employed by any organization providing domestic violence victim services such as a battered women's shelter or a tribal victim assistance advocates who assist and counsel domestic violence victims, with or without compensation. Further qualifications may be established in the code such as work experience.

C. HOLDER(S) OF VICTIM-COUNSELOR PRIVILEGE

The holder of the privilege is the victim, or the victim's guardian or conservator. The domestic violence victim-counselor privilege may cover two or more persons who jointly consult a domestic violence counselor in a support or therapy group. They are then joint holders of the privilege as joint clients. Some privilege provisions provide that a waiver by one of the joint privilege holders does not preclude the other from claiming the privilege and preventing disclosure of a privileged communication.

The privilege may be claimed by:

- a. The holder of the privilege.
- b. A person authorized to claim the privilege by the holder.
- c. The person who was the domestic violence counselor at the time of the confidential communication.

The domestic violence counselor must assert the privilege whenever he or she is present when the communication is sought to be disclosed, or whenever authorized to claim the privilege under.

D. BURDEN OF PROOF AS TO PRIVILEGE

The claimant of the privilege has the burden of proving (1) the existence of the domestic violence victim-counselor relationship, (2) his or her standing to claim the privilege, and (3) a showing that the offered evidence is a confidential communication within that relationship.

E. PROTECTION OF VICTIM'S LOCATION

When a victim relocates to a new residence or shelter, the victim's address and



Section 6—Developing Tribal SV/IPV Code Provisions

phone number should be protected. Some model provisions include:

1. No attorney may disclose or permit to be disclosed to a defendant the address or telephone number of a victim or witness whose name is disclosed to the attorney unless specifically permitted to do so by the court after a hearing and a showing of good cause.
2. If the defendant is acting as his or her own attorney, the court shall endeavor to protect the address and telephone number of a victim or witness by providing for contact only through a domestic violence victims advocate or court appointed personnel.

F. PRESENCE OF VICTIM SUPPORT PERSONS IN COURT

1. Support Persons for Adult Victim

Crime victims generally have the right to be present at the preliminary hearing and trial, and to have support persons present, including family members or victims advocates. There are situations in which the presence of such persons would affect the victim's testimony, the jury or the witnesses. In such cases, the judge may need to weigh the victim's need for the support against the potential prejudice to the defendant.

The victim and family members should also be allowed to attend criminal proceedings. There must be a hearing on the motion to exclude the victim at which the victim is afforded the right to be heard.

2. Support Persons and Representatives for Children

The issues presented when child witnesses may need a support person or representative are similar to those presented when the witness is an adult. In recent years, focus on child victims has produced a variety of rights and innovative court procedures aimed at reducing the stress of the courtroom experience and addressing the needs of the child victim.

Children who must testify against a parent suffer great emotional distress. The court may consider appointing a representative for a child witness in a domestic violence case. Another way to minimize the stress of a child witness is to avoid continuances.

XVII. VICTIM TESTIMONY IN DOMESTIC VIOLENCE CASES

Victims of violent crime are often reluctant to come to court and testify. Often victims want forget that the violence happened or they may fear retaliation by the defendant. Some victims may blame themselves for the abuse. Victims will provide other reasons for not testifying including a desire to avoid public knowledge of the violence or the abuser; inability to take time from work or to arrange childcare. Additionally, many victims of domestic violence are paralyzed by fear, depression, or possible alcohol or substance abuse.

In some cases, a victim's testimony may be inconsistent with previous statements made



Section 6—Developing Tribal SV/IPV Code Provisions

to police, case investigators, or the court. Victims of violence are traumatized by violent incident and may minimize and deny the level of violence in order to cope with the resulting psychological trauma.

In presiding over a case in which the victim is reluctant or refuses to testify, the court may find it useful to determine the reasons underlying the reluctance. This assessment may assist the court in determining the best course of action.

A. ENCOURAGING VICTIMS TO TESTIFY

The following questions may assist the court in encouraging a reluctant victim to testify. These questions should be asked of the victim outside the presence of the defendant.

- Are you aware that you are under oath to tell the truth? Are you aware that you have been subpoenaed and that you must testify, or be held in contempt?
- Are you aware that the tribe is bringing these charges, and that the decision to prosecute the defendant is up to the prosecutor?
- When did you decide not to testify?
- Are you now living with the defendant? Or does the defendant know where you are staying?
- Are you financially dependent on the defendant?
- Do you and the defendant have children together?
- Has the defendant made any promises to do something for you if you do not testify?
- Has the defendant or anyone else threatened you or told you not to testify?
- Has the defendant or anyone else threatened your children, family, or friends?
- Is there some other reason you are afraid of the defendant?
- Are you aware that this court can issue an order telling the defendant to stay away from you and have no contact with you or your family?
- Have you talked about your desire not to testify with the prosecutor, victim-witness staff, or staff of the local domestic violence agency? If not, would you be willing to talk with them now?
- Would you like to have a bailiff escort you when you leave today?

If the reluctance to testify results from fear of the defendant, the court may want to consider continuing the case for a period of hours or days to permit the victim to obtain information and counseling from the victim assistance program. Victim advocates can inform the victim about regarding the court process and can assist the victim in setting up a safety plan. In several courts, judges report that battered women are more willing to cooperate and testify when they receive information, emotional support, community referrals, and trial preparation from victim advocates.

XVIII. CHILDREN'S TESTIMONY IN DOMESTIC VIOLENCE CASES

Children are often present during the violence, so their testimony may have great probative value. On the other, the child may suffer great trauma from testifying, and may be subject to great stress from other family members for "taking sides." Children's testimony in domestic violence cases should be used as a last resort.



Section 6—Developing Tribal SV/IPV Code Provisions

A. COMPETENCY

If a child is asked to testify, the child-witness must be found competent to testify. Competency requires that a child is able to convey their perception of the incident. The burden of proof is on the party who challenges a witness's competency to testify. The determination of competency is made by the trial judge, and is not resubmitted to the jury. A ruling of a trial court that a child is a competent witness is conclusive, but it is up to the trier of fact to determine the weight it will give a child's testimony.

B. ALTERNATIVE METHODS OF TAKING EVIDENCE

Courts must be concerned with the danger of retraumatizing a child who testifies. Alternatives to face-to-face testimony include having the witness look somewhere other than at the defendant, using videotaped testimony instead of live testimony, using one-way screens or mirrors, one-way closed circuit television, two-way closed circuit television, or simply excluding the defendant from the courtroom or from an in-camera hearing.

In challenges to such alternatives, the United States Supreme Court stated that the confrontation clause reflects a preference for face-to-face confrontation at trial, which should give way if a different procedure is necessary to further an important public policy. It further states that the protection of child witnesses is "just such a policy."²⁰

C. COURT ORDERS TO PROTECT CHILD FROM INFLUENCE

Various types of court orders can be issued to protect child witnesses from influence. Stay-away orders or no-contact orders may be available when there is a showing of a good cause that intimidation has or may occur.

XIX. EXPERT TESTIMONY IN DOMESTIC VIOLENCE CASES

A. EXPERT TESTIMONY OFFERED BY PROSECUTION

Judges should permit expert testimony on the battered spouse syndrome in order to provide the judge and jury with a clear understanding of the dynamics and complexities of family violence.²¹ The characteristics and effects of abuse on battered women are collectively known as battered women's syndrome. Some victims suffer a decreased ability to respond effectively to the violence. Victims may appear traumatized, withdrawn, and nonresponsive. They may suffer from lowered self-esteem and may have developed coping behaviors to increase their personal safety. They may minimize and deny the abuse and may use alcohol or drugs to cope with the abuse. Judges must learn about victim response through expert testimony or by other means.

1. Qualifications of Expert

Although experts are often presumed to be psychotherapists or other professionals, professional credentials should not be required for qualifica-



Section 6—Developing Tribal SV/IPV Code Provisions

tion as an expert. In domestic violence cases, the most qualified experts are the people who have worked for many years in battered women's shelters and victim assistance programs.

Expert testimony on domestic violence offenders may be useful to explain typical characteristics of batterers. These include minimization, denial, and intellectualization, blaming the victim for the violence, extreme possessiveness and jealousy, traditional sex role attitudes, poor communication skills, withdrawal during times of stress, extremes of kindness and cruelty, social isolation, and impulsiveness.

XX. SENTENCING AND TREATMENT

A. SENTENCING OBJECTIVES

1. Role of Court

The goals of sentencing in a domestic violence case are to:

- a. Stop the violence;
- b. Protect the victim, the children, and other family members;
- c. Protect the general public;
- d. Hold the batterer accountable for the violent conduct;
- e. Uphold the legislative intent to treat domestic violence as a serious crime;
- f. Provide restitution for the victim; and
- g. Rehabilitate the batterer.

The U.S. Attorney General's Task Force on Family Violence, Final Report concluded that in serious abuse cases, incarceration may be the appropriate punishment.

The imposition of a just sentence is the desired culmination of any criminal judicial proceeding. The sanction rendered is not only punishment for the offender but also an indication of the seriousness of the criminal conduct and a method of providing protection and support to the victim. Too often, in family violence cases, the sentence fails on all three counts....

Judges and the sentences they impose can strongly re-enforce the message that violence is a serious criminal matter for which the abuser will be held accountable. Judges should not underestimate their ability to influence the defendant's behavior. Even a stern admonition from the bench can help to deter the defendant from future violence.²²

Courts can and should communicate a message that domestic violence is criminal conduct no



Section 6—Developing Tribal SV/IPV Code Provisions

less serious than other violent crimes.

2. Sentencing Considerations

Enhanced sentences for domestic violence offenders have been upheld in the following situations:

- Prior convictions especially if numerous and increasingly serious.
- Pattern of violent conduct indicating a serious danger to society.

Other considerations applicable in domestic violence sentencing include:

- Marital problems not mitigating circumstances in domestic violence cases.
- Prior treatment for domestic violence may be considered at the discretion of the sentencing court.
- Alcohol or Substance abuse.
- History of threats to witnesses may be an aggravating circumstance.
- Great bodily injury or threats of great bodily injury.
- Viciousness, torture, extreme and/or prolonged pain.
- Use of weapon.
- Victim particularly vulnerable.
- Multiple victims.
- Planning or sophistication indicating premeditation.

B. VICTIM CONSIDERATIONS IN SENTENCING DOMESTIC VIOLENCE DEFENDANTS

1. Victim Impact Statements

Some jurisdictions have given victims of crime the right to allocution at sentencing hearings. A court should consider these impact statements before imposing judgment and sentence.

2. Restitution

Victims of crime in Indian country may apply to state victim compensation boards for many types of economic loss. Many victim assistance programs provide victim counseling. In the alternative, victims may sue the convicted perpetrator for general restitution for these and other costs. Collection is often difficult due to the economic realities of most tribal communities.

3. Victim Safety

Tribal courts should carefully consider the degree of danger that the defendant poses to the community. Incarceration is an effective way to prevent the defendant from harming the victim, at least for the term of custody. If the court grants probation, and the circumstances warrant, the court should issue a criminal protective order as a term of probation. If appropriate, the order should contain residence exclusion or stay-away conditions.



Section 6—Developing Tribal SV/IPV Code Provisions

Tribal communities should consider adopting code provisions which require tribal law enforcement to provide notice at least 15 days before a defendant convicted of stalking or serious bodily injury is released from custody. The notice should be given to any victim of the offense, a family member of the victim, or a witness to the offense. Release may be defined to include escape, parole, or probation, or release because time has been served.

4. Family's Economic Support

Claims that incarceration of a batterer would deprive the family of economic support must be reviewed carefully. The court should review the victim's impact statement to determine whether the concern for the family's economic support is shared by the victim. In some cases, fear of the defendant outweighs the concern for economic support.

If incarceration of a convicted batterer would deprive the family of economic support, the court may want to consider sentencing the batterer to a rehabilitative counseling program or certified batterer's treatment program.

5. Impact on Children

In many domestic violence cases, children are witnesses or victims of the violence. Children may suffer emotional trauma as a result of witnessing the violence and may need counseling. Strict limitations may need to be placed on the defendant's contact with the children, although criminal courts do not have authority to issue custody or visitation orders. Their authority is limited to ordering restrictions on pre-existing custody or visitation arrangements.

6. Continued Relationship Between the Victim and the Batterer

The victim's desire to continue the relationship with the batterer does not bar prosecution of the defendant, nor does it bar incarceration.

C. PROBATION IN DOMESTIC VIOLENCE CASES

1. Probation for Batterers

Judges have discretion in setting the terms of probation. Probation should be commensurate with crime committed. Terms of probation may include successful completion of a batterer's program or another appropriate counseling program, payment of fees, community service, completion of an alcohol or chemical dependency program. Failure to comply with the probation requirements should be immediately reported to the court or prosecutor and additional sentencing or incarceration should be considered. If it appears to the court that the defendant is not performing satisfactorily in the program, the court should hold a hearing to determine whether further sentencing should proceed.

2. Monitoring Probation



Section 6—Developing Tribal SV/IPV Code Provisions

Court continuity is very important in monitoring domestic violence probationers. If at all possible, each case should continue to be dealt with by the same judge who sentenced the defendant.

In domestic violence cases, regular progress reports should be given to the court by the batterer or an attendance report by a counselor. It is in the court's discretion to decide how frequently to schedule progress report hearings. A cooperative effort among the batterer's program, the probation officer, the prosecutor, and the court is necessary to make the probationary terms effective.

3. Probation Revocation

The court may revoke probation if the interests of justice so require and the court has reason to believe that the person has violated any of the conditions of probation. In domestic violence cases, probation may be revoked if the court finds any of the following:

- a. Defendant is not performing satisfactorily in the assigned program,
- b. Defendant is not benefitting from the program,
- c. Defendant has not complied with a condition of probation, or
- d. Defendant has engaged in criminal conduct.

Because domestic violence incidents tend to escalate in severity and can result in homicide of the victim, batterer, and/or children, the court's interpretation of "engaging in criminal conduct" should include any assaults or threats against a victim.

Individual batterers may require various types of treatment programs. One specific treatment program may suffice. Regardless of the program in which the batterer participates, strong judicial supervision is required. Courts must continuously review batterer treatment referrals and sanction those who do not comply. Judges must collaborate with law enforcement, counselors, caseworkers, and prosecutors to develop community oriented approaches to eliminating domestic violence.



Section 6—Developing Tribal SV/IPV Code Provisions

DOMESTIC & FAMILY VIOLENCE:

A MODEL CIVIL CODE FOR WISCONSIN'S P.L. 280 TRIBES

May 1997

Sponsored by:

NATIVE AMERICAN STATEWIDE DOMESTIC ABUSE
SHELTER PROGRAM &
AMERICAN INDIANS AGAINST ABUSE, INC.
LAC DU FLAMBEAU, WISCONSIN
AND
WISCONSIN JUDICARE, INC.
INDIAN LAW OFFICE
WAUSAU, WISCONSIN



Section 6—Developing Tribal SV/IPV Code Provisions

INTRODUCTION

Domestic and family violence threatens the safety, health, welfare and economies of Indian Communities. Even though it is often hidden from view, members suffer serious physical and emotional injuries and their family structure disintegrates. The victims and their families drain the economy of the community with medical expenses and lost participation and productivity in tribal activities. The violence perpetuates through the generations when children see it as an acceptable way to cope with stress or problems or to gain control over another person.

Domestic and Family Violence: A Model Civil Code for Wisconsin Tribes is designed to assist area tribes in developing civil laws that eliminate barriers to meeting the safety and other needs of victims of family violence, hold batterers accountable for their actions, and enhance the provision of services to batterers and their victims.

It includes provisions describing jurisdiction and the civil nature of the code and setting out court procedures including both remedies and penalties for violating orders for protection. The model also provides a framework for identifying and developing services for batterers, victims and their family while protecting confidentiality of victims. The focus is on providing options for courts and tribal programs which emphasize prevention and treatment consistent with traditional values.

American Indians Against Abuse, Inc. and the Native American Statewide Shelter Project invited representatives from the tribes in Wisconsin which share concurrent civil jurisdiction with the State to advise on the development of this model. About twenty-five experts, including tribal judges, prosecutors, law enforcement, elected tribal officials, attorneys, treatment providers and domestic abuse/family violence advocates, attended a series of discussions which began by identifying specific concerns and later proposed solutions for domestic violence matters in Indian country in Wisconsin.

The impetus for this action came from several events. In January 1994 the National Council for Juvenile and Family Court Judges published a model state code addressing the need for laws that protect victims in a fair, prompt and comprehensive fashion and help prevent future violence. The model state code covers civil protection orders, and treats domestic and family violence as a crime which requires early, aggressive and thorough intervention. It also assures that a child's safety and well-being is given paramount concern. Later in 1994 the federal Violence Against Women Act was enacted which includes provisions requiring states, as well as other tribes, to enforce protection orders from an issuing tribe just as if the order came from their own courts. Last, Wisconsin recently enacted some law changes covering domestic and family violence and will very likely consider additional changes in the current session. The Wisconsin Coalition Against Domestic Violence, a statewide advocacy group for victims and their families, is proposing changes based on the model state code and developed with the advice and participation from Indian communities in the state.

Tribes have a timely opportunity to take a leadership role in reducing and preventing domestic and family violence in their communities. Federal law and related appropriations through the Department of Justice provide support for tribal action. There



Section 6—Developing Tribal SV/IPV Code Provisions

is an ongoing statewide effort to address domestic an family violence which actively includes tribal input. Tribes can assert their sovereign authority to set strong policies and act to protect victims and prevent future violence. This model code offers a public policy statement and a framework for tribes to intervene effectively to break the circle of violence.

Please consider what it offers carefully and act to alleviate domestic and family violence in your community.

American Indians Against Abuse, Inc.

Statewide Shelter Project

Wisconsin Judicare, Inc.



Section 6—Developing Tribal SV/IPV Code Provisions

TABLE OF CONTENTS

	<u>Page</u>
I. Title, Purpose, and Definitions	1
A. Title	1
B. Purpose.	1
C. Construction	1
D. Definitions.	1
1. Domestic and family violence	
2. Family or household member	
3. Exclusions	
II. Jurisdiction & Civil Nature of this Code	3
A. Jurisdiction & Authority to Enact this Code.	3
B. Jurisdiction of the Court.	3
C. Availability of Criminal Penalties	3
III. Civil Orders for Protections.	3
A. Who May Petition the Court	3
B. Contents of Petition	4
OPTIONAL C. Duty of Court Personnel to Provide Forms	4
And Clerical Assistance	
D. Emergency Orders for Protection.	5
E. Notice to Respondent & Other	6
Interested Parties	
F. Hearing.	6
G. Remedies Available in an Order	6
for Protection	
H. Duration, Extension, and Modification of	8
Orders for Protection	



Section 6—Developing Tribal SV/IPV Code Provisions

I.	Enforcement and Penalties for Violation.	9
J.	Full Faith & Credit.	9
IV	Intervention and Referrals	10
A.	Confidentiality for Victims	10
B.	Intervention for Batterers.	11
V.	Prevention, Treatment, and Education Services.	12
A.	A Domestic Abuse Response Team is hereby created within the Tribe.	12
B.	Duties of the Domestic Abuse Response Team.	13
C.	Program Responsibilities.	13
D.	Continuing Education.	14
VI.	Severability	15



Section 6—Developing Tribal SV/IPV Code Provisions

DRAFT FEBRUARY 1997

I. TITLE, PURPOSE AND DEFINITIONS

A. Title

This Code may be cited as the "Domestic and Family Violence Code.

B. Purpose

The purpose of this Code is to:

1. Eliminate barriers to meeting the safety and other needs of victims of family violence,
2. To hold batterers accountable for their actions, and
3. To enhance the provision of services to victims and their batterers.

C. Construction

This Chapter shall be liberally construed to effect the purposes stated above and shall be interpreted to comport with the customs and traditions of this Tribe. If tribal law, customs and traditions are inconclusive in any matter arising under this chapter, then federal law and, as a last resort, the law of the State of Wisconsin, may be used for guidance.

D. Definitions

Domestic and Family Violence

1. Domestic and family violence includes:
 - a) intentional infliction of physical harm to a family or household member;
 - b) an act, word, gesture or any other behavior that places a family or household member in fear of imminent physical harm;



Section 6—Developing Tribal SV/IPV Code Provisions

- c) intentional use of force, coercion, threat, intimidation, humiliation, or confinement which results in mental or emotional harm to a family or household member; or
 - d) causing a family or household member to engage involuntarily in sexual activity by force, coercion, threat, intimidation, humiliation, confinement, or administering alcohol or drugs to the family or household member without their knowledge.
2. Imminent physical harm as used above refers to such physical harm that is close or near at hand, that is impending, perilous, or on the point of happening. It does not require that such physical harm be immediate or without delay after the behavior that places the victim in fear.

Family or household member

1. Family or household member includes:
- a) adults and/or minors who are current or former spouses;
 - b) adults and/or minors who have a child, including an unborn child, in common;
 - c) adults and/or minors who are living together or have lived together and who have engaged in a sexual relationship;
 - d) adults and/or minors who are involved or have been involved in a sexual or otherwise intimate, ongoing relationship including persons who are identified in the community as boyfriend and girlfriend; and
 - e) adult relatives who are living together or who have lived together.

Exclusions

2. Domestic and family violence in the parent-minor child relationship is not covered in this Code. The occurrence of domestic and



Section 6—Developing Tribal SV/IPv Code Provisions

family violence in that relationship is covered in the **[Child Protection Code]** of this Tribe or through the juvenile and children's codes of the State of Wisconsin.

OPTIONAL

3. Where the victim is elderly, the **[Elder Protection Code]** of this Tribe offers protections not available through this Code.

II JURISDICTION & CIVIL NATURE OF THIS CODE

A. Jurisdiction & Authority to Enact This Code

This Code is adopted pursuant to **[Insert Tribal Constitutional Cite]** and pursuant to an exercise of this Tribe's inherent sovereign authority.

B. Jurisdiction of the Court & Civil Nature of This Code

The jurisdiction of the Tribal Court shall be civil in nature and shall include the power to issue all orders necessary to insure the purposes and provisions of this Code are put into effect. This includes the power to enforce subpoenas, orders of contempt, and any other orders as appropriate.

C. Availability of Criminal Penalties

The provisions of this Code do not replace the criminal penalties and procedures available under state law for an act of domestic and family violence.

III. CIVIL ORDERS FOR PROTECTION

A. Who May Petition the Court

1. A person who is subject to the jurisdiction of this Tribe's Court and who has been a victim of domestic and family violence may file a Petition for an Order for Protection against a family or household member who commits an act of domestic and family



Section 6—Developing Tribal SV/IPV Code Provisions

violence.

2. A parent, guardian, or other representative may file a Petition for an Order for Protection on behalf of a minor victim against the family or household member who commits an act of domestic violence.
3. No filing fee, bond, or other payment shall be required from the victim for the filing of a Petition for an Order for Protection under this Code.

B. Contents of Petition

1. The Petition shall include membership status or any other information necessary to establish jurisdiction of the Court; the Petitioner's name and address at the time of the incident of domestic and family violence; the name, address, and relationship of the family or household member who is the Respondent; a description of the specific facts and circumstances justifying the relief requested; the relief requested; and the current location of the Respondent, if known.
2. The current location of the Petitioner shall not be released by the Court except on Petitioner's written request.
3. The Petition shall also state the nature of any other legal matter pending regarding the Petitioner or the Respondent; for example, criminal charges, child protection proceeding, and divorce.
4. The Petition may include a request that the Court arrange for law enforcement to be present at the time of the hearing.

C. Duty of Court Personnel to Provide Forms & Clerical Assistance

1. The Clerk of Court or other designated person shall provide to a person requesting an Order



Section 6—Developing Tribal SV/IPV Code Provisions

for Protection;

- a) a standard Petition form with instructions for completion,
- b) all other forms required to petition for an Order for Protection, such as those needed for service of process,
- c) clerical assistance in filling out the forms and filing the Petition for an Order for Protection, and
- d) provide written notice to the victim identifying the nearest available provider of shelter and advocacy services.

2. In order to facilitate enforcement under full faith and credit provisions of state law, the Clerk of Court or other designated person shall send an authenticated copy of the Emergency Order for Protection and the Order for Protection to the circuit court clerk for the county where Respondent is located within one business day of the issuance of the Order.

D. Emergency Orders for Protection

1. The Court shall immediately grant an ex-parte Emergency Order for Protection if, based on the specific facts stated in the Petition, there is reasonable grounds to believe that the Petitioner is in danger of domestic and family violence occurring prior to a hearing on the Petition. An allegation of a recent incident of domestic and family violence constitutes reasonable grounds to believe the Petitioner is in danger.
2. The Emergency Order for Protection may include the following relief:
 - a) prohibit the Respondent from committing or threatening to commit acts of domestic and family violence against the



Section 6—Developing Tribal SV/IPV Code Provisions

- Petitioner and the Petitioner's family and household members;
 - b) prohibiting the Respondent from contacting or communicating with the Petitioner directly or indirectly;
 - c) removing and excluding Respondent from the Petitioner's residence, regardless of ownership;
 - d) removing and excluding Respondent from the Petitioner's place of employment and other locations frequented by Petitioner; and
 - e) such other relief as the Court deems necessary to protect and provide for the safety of the Petitioner and any designated family or household member.
- 3. The Emergency Order for Protection shall be served with the notice of hearing on the Respondent and shall expire at the time of the hearing.

E. Notice to Respondent & Other Interested Parties

- 1. Respondent shall be served a notice of hearing along with a copy of the Petition and a copy of any Emergency Order for Protection at least forty-eight hours prior to the time of the hearing.

F. Hearing

- 1. The Court shall hold a hearing on the Petition for an Order for Protection within seven (7) days of the filing date of the Petition.
- 2. The Court may extend the time for a hearing once for up to fourteen (14) days upon consent of the parties or upon finding that Respondent has not been timely served a notice of hearing.

G. Remedies Available in an Order for Protection

- 1. The Court may grant the following relief in an Order for Protection if requested by the Petitioner and after notice and hearing, whether or not the Respondent appears:



Section 6—Developing Tribal SV/IPV Code Provisions

- a) prohibit the Respondent from threatening to commit or committing acts of domestic or family violence against the Petitioner;
- b) prohibit the Respondent from harassing, telephoning, contacting, or otherwise communicating with the Petitioner directly or indirectly, or through others;
- c) remove an exclude Respondent from Petitioner's residence, or if Respondent owns or leases the residence and the Petitioner has no legal interest in the residence, then the Court may order the Respondent to avoid the residence for a reasonable length of time until the Petitioner relocates;
- d) remove and exclude Respondent from Petitioner's place of employment at any time Petitioner is present;
- e) remove and exclude Respondent from other specified locations frequented by Petitioner;
- f) remove and exclude Respondent from specified public social events and activities;
- g) limit or prohibit contact with minor children of Respondent where necessary to protect the safety of the Petitioner or child;
- h) refer minors who are family or household members for assessments and services through the Indian Child Welfare office, mental health program, or other tribal program;
- i) require Respondent to participate in alcohol and other assessments and to participate in treatment where the treatment program meets the State of Wisconsin's batterer's treatment standards;
- j) limit or prohibit Respondent from using or possessing a firearm or other weapon as specified by the Court;
- k) require Respondent to reimburse the Petitioner or any other person for any expenses associated with the domestic or family violence, including but not limited to medical expenses, counseling,



Section 6—Developing Tribal SV/IPV Code Provisions

- shelter, and repair or replacement of damaged property;
 - l) require Respondent participate in community service, such as cutting wood or providing other services for elderly members of the Tribe;
 - m) require that notice of Respondent's act(s) of domestic and family violence be publicly posted; and
 - n) any other relief as the Court deems necessary to protect and provide for the safety of the Petitioner and any designated family or household member.
2. An Order for Protection shall not contain any provisions which impose requirements on a victim of domestic and family violence. The Court may recommend services for the victim and shall verify that the victim is aware of locally available shelter facilities.
 3. The Court shall cause the Order for Protection to be delivered for service of process; make reasonable efforts to ensure that the Order is understood by the Petitioner, and Respondent if present at the hearing; and transmit a copy of the Order for Protection to the local law enforcement agency or agencies within one business day after the Order is issued if requested by the Petitioner.
 4. The Court shall not grant a mutual Order for Protection to opposing parties.
 5. The Court shall not deny a Petitioner the relief requested solely because of a lapse of time between an act of domestic or family violence and the filing of the Petition.

H. Duration, Extension, and Modification of Orders for Protection

1. An Order for Protection or a modification of an Order for Protection is effective until further order of the Court.



Section 6—Developing Tribal SV/IPV Code Provisions

2. An Order for Protection may be modified or withdrawn following notice and hearing, on the Court's own motion or upon the request of either Petitioner or Respondent if;
 - assessments or treatments ordered by the Court have been completed,
 - Respondent demonstrates behavioral changes which eliminate the risk of a recurrence of acts of domestic and family violence as verified by treatment providers or other independent sources identified by the Court, or
 - the Court determines the safety needs of the Petitioner and other family or household members are provided for by the modification or withdrawal of the Order for Protection.
3. If Respondent is excluded from Petitioner's residence, or ordered to stay away from Petitioner, an invitation by the Petitioner to do so does not waive or nullify an Order for Protection.

I. Enforcement and Penalties for Violation

Where Respondent has violated an Order for Protection, the Court may order additional and other remedies as provided in Section G., above and may impose such penalties as are deemed necessary by the Court given the severity of the violation of the Order. Penalties include, but are not limited to those available for contempt, fines, assessments of court costs and fees, and exclusion from tribal offices and businesses.

J. Full Faith & Credit

1. Any protection order that is consistent with subsection 2) of this section by the court of one state or Indian tribe (the issuing state or Indian tribe) shall be accorded full faith and credit by this Tribe and enforced as if it were the order of this Tribal Court.
2. A protection order issued by a state or tribal court is consistent with this



Section 6—Developing Tribal SV/IPv Code Provisions

subsection if:

- a) such court has jurisdiction over the parties and matter under the law of such state or tribe; and
 - b) 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 the issuing state's or tribe's law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.
3. A protection order issued by a state or tribal 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:
- a) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or
 - b) a cross or counter petitioner has been filed and the court did not make specific findings that each party was entitled to such an order.

IV INTERVENTION & REFERRALS

A. Confidentiality for Victims

1. A victim of domestic abuse may refuse to disclose and may prevent any volunteer or employee of a program for victims of domestic abuse from disclosing, the content of oral communication and written records and reports concerning the victim.
2. This privilege may be waived only by the victim. It must be in writing and must identify what information may be disclosed,



Section 6—Developing Tribal SV/IPV Code Provisions

to whom, and for what purpose. Such a waiver is not valid after thirty (30) days or after the victim revokes the waiver.

OPTIONAL 3. A violation of this privilege will be treated as an ordinance violation under **[Tribal Law Cite]**.

4. This privilege does not relieve a person from a duty imposed under **[Tribal Law Cite]** or **[State Law Cite]** to report child abuse or neglect or from providing evidence about child abuse or neglect in State court pursuant to proceedings under Wisconsin Statutes, Chapters 48 and 938 and in Tribal Court under **[Tribal Law Cite]**.

5. These provisions on confidentiality for victims shall not prevent the disclosure of information compiled about incidents of domestic and family violence which protects the identity of the victim and family or household members of the victim.

B. Intervention for Batterers

1. Where services are provided for batterers pursuant to an Order for Protection, the batterer who is ordered into the program shall be required by the Court to sign the following releases:
 - a) allowing the provider of services to inform the victim and victim's advocate whether or not the batterer is in treatment pursuant to the Order, whether or not the batterer is in compliance with treatment provisions, and whether or not the safety of the victim is at risk;
 - b) allowing prior and current treating agencies to provide information about the batterer to the service provider; and
 - c) allowing the service provider to provide information about the batterer to relevant legal entities including



Section 6—Developing Tribal SV/IPV Code Provisions

courts, parole and probation officers,
and child protective services.

- C. Written policies and procedures developed pursuant to this chapter may include requiring tribal programs and other entities within the jurisdiction of this Tribe to provide information about the rights of victims and about remedies and services available, may set standards for service providers concerning domestic and family violence, and may establish protocols for intervention and referrals for services for suspected victims or batterers, and their household and family members.

V. PREVENTION, TREATMENT AND EDUCATION SERVICES

A. A Domestic Abuse Response Team is hereby created within the Tribe

1. The Domestic Abuse Response Team is intended to coordinate and involve various agencies present in the community in order to;
 - a) eliminate barriers to meeting the safety and other needs of victims of family violence,
 - b) to hold batterers accountable for their actions, and
 - c) to enhance the provision of services to victims and their batterers.
2. The Domestic Abuse Response Team is advisory in nature. It is in no way intended to supplant the authority or responsibility of individual agencies. It is intended to promote cooperation, communication, and consistency.
3. Composition of the Team: The Team shall consist of a **[Tribal Governing Body]** member selected by the **[Tribal Governing Body]**; the Directors of Human/Social Services, the Employment Assistance Program, and the Health Office; the Chief Judge of the Tribal Court; the Director of the program which provides services to victims of domestic abuse; and



Section 6—Developing Tribal SV/IPv Code Provisions

representatives of **[List organizations]**. In addition, the Team shall include at least two members of the community who have demonstrated expertise and experience in providing services to victims of domestic abuse and their family or household members. The community members shall be selected by the **[Tribal Governing Body]**.

B. Duties of the Domestic Abuse Response Team

1. The duties of the Domestic Abuse Response Team shall include:
 - a) advising on the development of plans, policies and procedures on the response to the occurrence of domestic and family violence;
 - b) developing a long term plan to promote the Team's purpose as described in Section A.1.;
 - c) identifying resources, programs, and services necessary in the community to promote the Team's purposes;
 - d) gathering information relevant to the occurrence of domestic and family violence in the community;
 - e) providing for public education efforts in the community;
 - f) monitoring adherence to the long term plan;
 - g) and promoting effective strategies for prevention and intervention.
2. The Team shall report on its activities to the **[Tribal Governing Body]** each calendar quarter.

C. Program Responsibilities

1. The tribal programs and other organizations within the jurisdiction of the Tribe and listed below shall develop and put into effect written policies and procedures concerning its effective response to the occurrence of domestic abuse within ninety (90) days of the effective date of this enactment.
2. This requirement applies to the following



Section 6—Developing Tribal SV/IPV Code Provisions

programs and organizations:

Human/Social Services	Housing
Health Care Providers	Tribal Council
Employment Assistance Program	Tribal Court
Domestic Abuse/Shelter Prog.	Law Enforcement
Schools and Day Care	

3. A copy of these policies and procedures shall be provided to the Domestic Abuse Response Team and to the program responsible for coordinating or providing services to victims and perpetrators of domestic abuse within ninety (90) days of the effective date of this enactment.
4. All tribal programs and other organizations within the jurisdiction of the Tribe shall post notice as provided by the Domestic Abuse Response Team in a location in view of all employees identifying where victims of domestic and family violence can receive assistance.

D. Continuing Education

1. The policies and procedures developed under the above section shall provide for continuing education of employees concerning domestic and family violence on the following topics:
 - the nature, extent and causes of domestic and family violence
 - practices designed to promote safety of the victim and other family and household members, including safety plans;
 - resources available to victims, perpetrators and families such as advocacy, health care, alcohol and mental health treatment, and shelter programs;
 - sensitivity to gender bias and cultural, racial, and sexual issues; and
 - the lethality of domestic and family violence.



Section 6—Developing Tribal SV/IPV Code Provisions

VI. SEVERABILITY

If any part or parts, or the application of any part, of this chapter is held invalid, such holding shall not affect the validity of the remaining parts of this chapter. The **[Tribal Governing Body]** hereby declares that it would have passed the remaining parts of this chapter even if it had known that such part or parts or the application of any part would be declared invalid.

CERTIFICATION

THE FOREGOING **[ORDINANCE NO.:-----]** was enacted by the **[Tribal Governing Body]** of the **[Tribe]** on the ____ day of _____, 200__, by a vote of ____ for, ____ against, and ____ abstaining, at a duly called meeting at which a quorum of the **[Tribal Governing Body]** was present.



Section 6—Developing Tribal SV/IPV Code Provisions

TABLE OF CONTENTS FOR APPENDICES

Optional Traditional/peacemaker Court Alternative Dispute Resolution Sections	A
Optional Criminal Penalties and Procedures	B
Chapter 2 - Criminal Penalties & Procedures.	C
Effects of Domestic Violence on Children	D
Indian Country Today newspaper article	E
Pueblo Drum Newsletter.	F
Domestic Violence Brochure from San Juan Pueblo	G
Prisoners of Abuse - Jody Raphael, Director, Taylor Institute	H
Children's Justice Act Grant Program for Native Americans	I
OVC Fact Sheets	J
Article on Recognition and Enforcement of Orders for Protection	K
Proposed Amendment to the Constitution of the United States to Protect the Rights of Crime Victims	L

Most appendices omitted due to timeliness and relevance of materials.



Section 6—Developing Tribal SV/IPV Code Provisions

Optional Traditional/peacemaker Court/Alternative Dispute Resolution Sections

III. CIVIL ORDERS FOR PROTECTION

G. Remedies Available in an Order for Protection

- OPTIONAL 6. The Court may refer the parties to [Traditional/Peacemaker Court/Alternative Dispute Resolution]. If the parties participate in this process, the time from the date of referral through the close of the process will not count against any time limits imposed on the parties in the matter pending before the Court. This referral shall not prevent the Court from issuing an Emergency Order for Protection or an Order of Protection.

V. PREVENTION, TREATMENT AND EDUCATION SERVICES

B. Duties of the Domestic Abuse Response Team

- g) providing assistance and making information and training available for the development of [Traditional/Peacemaker Court/Alternative Dispute Resolution] on issues of family and domestic violence;

If this option is adopted as tribal law, a section should be added to the Code which describes the procedures for referral and the way the outcome of the process will be acknowledged.



Section 6—Developing Tribal SV/IPV Code Provisions

APPENDIX A

Optional Criminal Penalties and Procedures

The attached provisions are part of the Model State Code's recommendations for addressing the criminal aspects of domestic and family violence. As with states, tribes who adopt these criminal provisions will need to modify at least the definition to conform to its current system of classification.

The provisions offer options for mandatory arrest or for presumptive warrantless arrest; outline procedures for arrest and prosecution; specify conditions for pretrial release, probation and parole; and identify rights and privileges of victims.

Criminal penalties and procedures are not included in the Model Tribal Code for tribes affected by P.L. 280's sharing of jurisdiction with the state. Because such tribes rarely have funding for a jail and police force, the exercise of criminal jurisdiction over domestic and family violence would entail significant expense and a cooperative agreement with the local unit of state government for such services.



Section 6—Developing Tribal SV/IPV Code Provisions

Sample Sexual Assault Codes

Hannahville Indian Community

Criminal Sexual Conduct Code § 1.2084

No Marital Immunity

- (8) Married persons. A person may be charged and convicted under the criminal sexual conduct code even though the victim is his or her legal spouse. However, a person may not be charged or convicted solely because his or her legal spouse is under the age of 16 years, or is mentally disabled, or is mentally incapable, or is mentally incapacitated.

No Corroboration Requirements

- (4) Corroboration of victim's testimony. The testimony of a victim need not be corroborated in prosecutions under any section of the criminal sexual conduct code.

High Threshold for Proving Rape Addressed

- (5) Resistance. A victim need not resist the perpetrator in the perpetrators commission of an offense under any section or subsection of the criminal sexual conduct code. Resistance by a victim is not an element of any offense under any section or subsection of the criminal sexual conduct code, and the absence of a victim's resistance is not a defense in a prosecution under any section or subsection of the criminal sexual conduct code.

Nez Perce Tribal Code

§ 4-1-48 Rape

- (a) It shall be unlawful for any person to engage in sexual intercourse with another:
 - (1) *who is incapable, through mental defect or any other unsoundness of mind, whether temporary or permanent, of giving legal consent;*
 - (2) *who is prevented from resistance by force or threats of immediate bodily harm, accompanied by an apparent ability to carry out such threats or by any intoxicating narcotic, or anesthetic substance administered by the accused;*
 - (3) *who is at the time, unconscious of the nature of the act and this is known to the accused; or*
- (4) *against the will or consent of the other.*



Section 6—Developing Tribal SV/IPV Code Provisions

(b) Sexual intercourse occurs when any sexual penetration, however slight takes place.

National Center for Victims of Crime Model Code Excerpt (1/2007)

SECTION TWO: OFFENSE

Any person who purposefully engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person to:

- (a) fear for his or her safety or the safety of a third person; or
- (b) suffer other emotional distress is guilty of stalking.

SECTION THREE: DEFINITIONS

As used in this Model Statute:

- (a) “Course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person’s property.
- (b) “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.
- (c) “Reasonable person” means a reasonable person in the victim’s circumstances.

SECTION FOUR: DEFENSES

In any prosecution under this law, it shall not be a defense that:

- (a) the actor was not given actual notice that the course of conduct was unwanted; or
- (b) the actor did not intend to cause the victim fear or other emotional distress.



Section 6—Developing Tribal SV/IPV Code Provisions



THE ADAM WALSH ACT

Helping Tribes Achieve Compliance

AWA became law on July 27, 2006



FROM AMERICA'S MOST WANTED

The parents joining President Bush at the White House signing all have one tragic thing in common, the loss of a child.

But that hasn't stopped these courageous people from fighting back and doing everything they can to not let other children fall victim to a predator.

The Walshes have been a part of this fight since the abduction and murder of their son, Adam Walsh, 25 years ago.

And of all the reform John Walsh has pushed for, he says "This may be the toughest piece of child protection legislation in 25 years and a great example of bipartisan politics."

It's only fitting that the toughest legislation in 25 years is named in honor of Adam, whose parents have fought so hard for our nation's children.

Of the 550,000 registered sex offenders nationally, the whereabouts of about 100,000 are currently unknown.

HISTORY

- It became clear no one (tribe, state, or territory) would substantially implement by deadline.
- On May 26, 2009 AG Holder granted a blanket one year extension. New deadline is July 26, 2010.
- On September 23, 2009 Umatilla and Ohio were determined to have substantially implemented SORNA.

SORNA'S REQUIREMENTS

- The Adam Walsh Act provides that each federally-recognized tribe may elect to retain authority over sex offender registry functions within the tribe's territory, unless the tribe is subject to the criminal jurisdiction of a state under 18 U.S.C. 1162. (Tribes in non-mandatory PL 280 states, or where retrocession has occurred).
- These are Alaska (except Metlakatla), California, Minnesota, Oregon, and Wisconsin (except for tribes excluded or retrocession).
- Does not anticipate new tribes. I am pushing for amendments to include PL 280 tribes and new tribes (among other things).

SORNA'S REQUIREMENTS

- Why are tribes in mandatory PL 280 states excluded? I have no idea...
- Due to retroactive effect, to pass constitutional muster, DOJ must maintain it is civil-regulatory in nature.
- If deemed criminal-prohibitory substantial aspects would violate ex-post facto clause of the US Constitution.
- Civil aspect of PL 280 does not give states civil regulatory authority over tribes.
- Makes no sense, but no state or tribe was consulted in its drafting.

SORNA'S REQUIREMENTS

- Detailed information must be kept. Offenders must be notified of requirements and sign acknowledgement forms.
- The CTUIR Manual has a number of forms you can use.

-
-
-
-
-
-

[illegible]

REGISTRATION CHECKLIST	
A	ALL INFORMATION SUBMITTED is printed size, well documented and located in an accessible file
B	ALL INFORMATION SUBMITTED is NO NATIONAL, TRIBAL, SEX OFFENDER DATABASE
C	CRIMINAL HISTORY <ul style="list-style-type: none"> 1) State of all arrests 2) State of all convictions 3) Notation of priors, probation, or suspended sentence 4) Fugitive status 5) Outstanding arrest warrants
D	DATE OF BIRTH <ul style="list-style-type: none"> 1) Actual date of birth 2) Reported date of birth 3) All alternative ages
E	DNA SAMPLING <ul style="list-style-type: none"> 1) Submit from offender 2) Submitted for entry to be Combined (link between System [CODIS])
F	EMPLOYER MEMBERS OF BR CAMP <ul style="list-style-type: none"> 1) Possession of all Business and identification cards issued to non members is a jurisdiction
G	EMPLOYMENT INFORMATION <ul style="list-style-type: none"> 1) Name of Employer 2) Address of Employer 3) How client contacted or will be contacted, including residential or unpaid work 4) Current or past major activities related
H	INVEST AND FIELD OFFICE TRAFFIC (Only report to right of line)
I	INTERVIEW ADVISORIES <ul style="list-style-type: none"> 1) Email address 2) Instant Message address or address 3) Any other designation or equipment used for self identification 4. All registration and the mailing or self identity goes in the present

UMATILLA'S EXPERIENCE

- In early 2007 an ad-hoc group began to meet to deal with the Adam Walsh Act. Desiree Allen-Cruz lead the effort.
- In July 2007 Umatilla passed a resolution opting in. Group members worked on the issue for a year before I was asked to assist.
- After reading the final guidelines, and attending the July/August 2008 National Symposium, it became clear there were major hurdles for tribes to overcome and few answers to important questions.

UMATILLA'S EXPERIENCE

- A few months later Umatilla hosted a Tribal, State, and Federal meeting regarding collaboration, family violence and SORNA.
- Leslie Hagen was a presenter on SORNA, and agreed to assist in making a tribally created model code available to all tribes.
- I drafted a model code, and Leslie convened 9 Indian Country experts in DC to work on it over several days in November, 2008.

UMATILLA'S EXPERIENCE

- After the group met, DOJ worked on finalizing the model code over the course of several months.
- Knowing the July deadline was coming quick, and realizing the amount of backlog the SMART Office would have to deal with in reviewing compliance and extension requests of all jurisdictions, Umatilla adopted a code on March 9, 2009 – prior to DOJ's release of the model.

UMATILLA'S EXPERIENCE

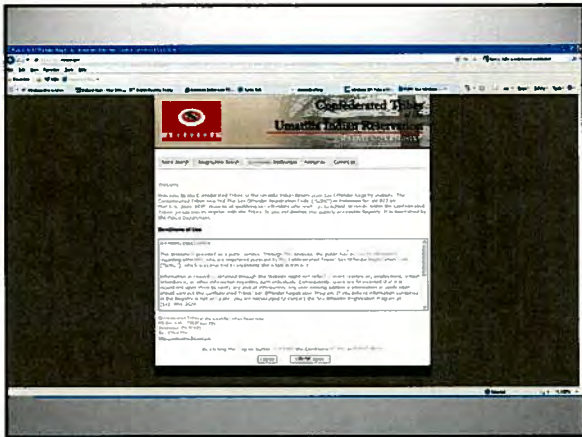
- It took one week to be granted an extension.
- It took 2 or 3 months for review to begin after submission.
- It took another month before a preliminary analysis was completed by the SMART Office.
- Two code and manual amendments were necessary over the course of a month and a half after initial review.
- Total time from original submission to compliance was 6 months.

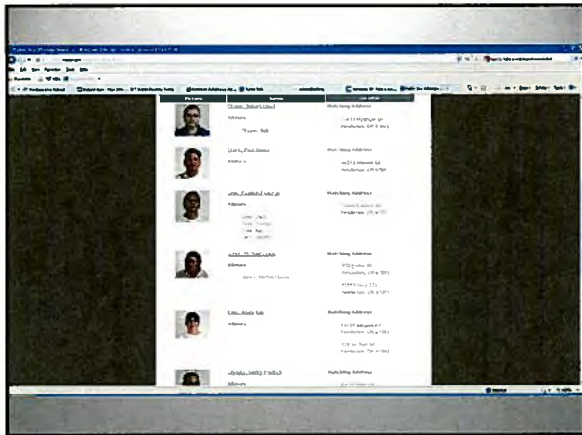
UMATILLA'S EXPERIENCE

- Lessons on submitting materials?
 - Submit materials at least six months prior to deadline. Hopefully, based on Umatilla's experience and changes made to the model code and checklist time for other tribes will be shorter (but don't bet on it).
 - When submitting a compliance package, ask for another extension.
 - Start early and work closely with Allison Turkel at the SMART Office to overcome hurdles.

IMPLEMENTATION HURDLES

- Implementation was easier than I had anticipated, but I had anticipated it would be extremely difficult.
- We hired a tech-savvy former police officer to run the registry system in June.
- Lesson? Hire the right person for the job. Prior law enforcement or registry experience and tech abilities are ideal.







IMPLEMENTATION HURDLES

- Processing Fingerprints
 - Problem: UTPD had not direct interface with Automated Fingerprint Identification System (AFIS). Not required by SORNA, but very useful (run by the FBI).
 - Solution: Working early on with OSP and using a familiar vendor made it easy to submit prints to OSP electronically and via mail. Cards are sent directly to OSP for entry into AFIS and retained by the OSP Sex Offender Registration Unit.

IMPLEMENTATION HURDLES

- Collecting DNA/CODIS
 - Problem: Collecting DNA and having it processed for entry into Combined DNA Index System (CODIS) – run by FBI. This is required by SORNA.
 - Solution: Tribes contacted OSP Forensics lab to get DNA kits. Only states have labs for DNA collection and entry into CODIS. Samples have been sent. However, no responses yet. Given backlog it could take months for processing – but submission is all that is required by SORNA.

IMPLEMENTATION HURDLES

- Entering information into LEDS/NCIC
 - Problem: Tribes wanted to enter sex offender information into the state Law Enforcement Database System (LEDS) and the National Crime Information Center (NCIC) database so other agencies could see it. Not required by SORNA.
 - Solution: Tribes enter information into LEDS/NCIC via an interface with the OSP. Tribes use a third party interface (FORCEcom) developed by OSP. Working with FORCEcom and OSP, an existing "mask" entry was developed for use by the Tribes.

CTUIR CONTACT INFO

- Feel free to give Umatilla a call, we would be happy to assist you in any way we can.
- M. Brent Leonhard, 541-966-2023.
BrentLeonhard@ctuir.com.
- Adam Gregory, 541-966-2526.
AdamGregory@ctuir.com.
- Desiree Allen-Cruz, 541-966-2895.
DesireeAllen-Cruz@ctuir.com.



**SEX OFFENDER REGISTRATION
POLICIES AND PROCEDURES MANUAL**

**CONFEDERATED TRIBES OF THE UMATILLA
INDIAN RESERVATION**

procedures manual is one of those models and is a critical component of this tribes' implementation of SORNA.

In furtherance of implementing the requirements of SORNA, the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation enacted the Sex Offender Registration Code in Resolution No. 09-023 (March 9, 2009). Pursuant to that Code, any qualifying sex offender must register with the tribe. This Policy and Procedures Manual provides the tribal police with guidelines on how to implement the Code, along with accompanying forms. The procedures in this manual must be strictly followed in every qualifying sex offense case. Any questions about implementation of the code or the meaning of any provision in this manual should be addressed with the Chief of Police or Attorney General.

Determining Who Must Register

Individuals subject to registration under the Code are *not* limited to individuals who have been convicted or sentenced by the tribal court, nor to tribal members or Indians in general. The following individuals **MUST** register with the tribe, **including all individuals who have been convicted and sentenced by the tribal court for a qualifying offense.**

An accurate determination will require that the registering official have a copy of the offender's conviction and sentence, and possibly the underlying police reports or allegations that establish the offense for which the individual was convicted. If you have any questions about whether a particular individual is required to register with the tribe, consult the advice of the Chief of Police or the Attorney General.

Offenders who reside within the exterior boundaries of the reservation or otherwise reside on property owned by the tribe in fee or trust regardless of location, are **employed within the exterior boundaries of the reservation** or on property owned by the tribe in fee or trust regardless of location, **or who attend school within the exterior boundaries of the reservation** or on property owned by the tribe in fee or trust regardless of location, that have been **convicted of the following offenses** are subject to the requirements of the Sex Offender Registration and Notification Code:

- A. **Attempts and Conspiracies.** Any attempt or conspiracy to commit any sex offense in section 111(5) of the federal Sex Offender Registration and Notification Act and any offense referred to in this section.
- B. **Federal Offenses.** A conviction for any of the following, and any other offense hereafter included within SORNA:
 - 1. 18 U.S.C. §1591 (sex trafficking of children),
 - 2. 18 U.S.C. §2241 (aggravated sexual abuse),

1. Any type of degree of genital, oral, or anal penetration,
2. Any sexual touching of or contact with a person's body, either directly or through the clothing,
3. Kidnapping of a minor,
4. False imprisonment of a minor,
5. Solicitation to engage a minor in sexual conduct understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct,
6. Use of a minor in a sexual performance,
7. Solicitation of a minor to practice prostitution,
8. Video voyeurism of a minor as described in 18 U.S.C. §1801,
9. Possession, production, or distribution of child pornography,
10. Criminal sexual conduct that involves physical contact with a minor or the use of the internet to facilitate or attempt such conduct. This includes offenses whose elements involve the use of other persons in prostitution, such as pandering, procuring, or pimping in cases where the victim was a minor at the time of the offense,
11. Any conduct that by its nature is a sex offense against a minor, and
12. Any offense similar to those outlined in:
 - a. 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion),
 - b. 18 U.S.C. §1801 (video voyeurism of a minor),
 - c. 18 U.S.C. §2241 (aggravated sexual abuse),
 - d. 18 U.S.C. §2242 (sexual abuse),
 - e. 18 U.S.C. §2244 (abusive sexual contact),
 - f. 18 U.S.C. §2422(b)(coercing a minor to engage in prostitution),
 - g. 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct).

In determining if an individual is required to register with the tribe the officer shall look to the underlying facts of the offenses for which the individual was sentenced.

Tiering Offenses

Pursuant to the Sex Offender Registration Code an offender will be assigned a particular tier. Each tier is based on the elements of the offense for which the offender was

Tier 2 Offenses

- A. Recidivism and Felonies. Unless otherwise covered by Section 3.03, any sex offense which is not the first sex offense for which a person has been convicted that is punishable by more than one year in jail is considered a "Tier 2" offense.
- B. Offenses Involving Minors. A "Tier 2" offense includes any sex offense for which a person has been convicted by a jurisdiction, local government, or qualifying foreign country pursuant to Section 2.02(C) that involves:
1. The use of minors in prostitution, including solicitations,
 2. Enticing a minor to engage in criminal sexual activity,
 3. Sexual contact with a minor 13 years of age or older, whether direct or through the clothing, that involves the intimate parts of the body,
 4. The use of a minor in a sexual performance, or
 5. The production for distribution of child pornography.
- C. Certain Federal Offenses. Conviction for any of the following federal offenses shall be considered "Tier 2" offenses:
1. 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion),
 2. 18 U.S.C. §2243 (sexual abuse of a minor or ward),
 3. 18 U.S.C. §2244 (abusive sexual contact with a person 13 years of age or older),
 4. 18 U.S.C. §2251 (sexual exploitation of children),
 5. 18 U.S.C. §2251A (selling or buying of children),
 6. 18 U.S.C. §2252 (material involving the sexual exploitation of a minor),
 7. 18 U.S.C. §2252A (production or distribution of material containing child pornography),
 8. 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the United States),
 9. 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity),
 10. 18 U.S.C. §2422(b)(coercing a minor to engage in prostitution),
 11. 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct).
- D. Certain Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of PL 105-119 (codified at 10 U.S.C. §951) that is similar to those offenses outlined in Section 3.02(A),(B), or (C) shall be considered "Tier 2" offenses.

Tier 3 Offenses

The Sex Offender Registration Code requirements are retroactive. Consequently, there may be individuals who are not presently registered or whose registration requirements previously ended, who must now register or re-register. In furtherance of this situation, the Code also mandates that the tribe "recapture" those offenders who must either register or re-register. This is the process the registering officer is to follow to ensure offenders are recaptured.

The registering officer shall ensure that all Tier 1 offenders are recaptured within one year, that all Tier 2 offenders are recaptured within 180 days, and all Tier 3 offenders are recaptured within 90 days of passage of the Sex Offender Registration and Notification Code.

Incarcerated Sex Offenders

The registering officer shall review the jail roster on a daily basis. For each individual incarcerated by the tribes, the registering officer shall review their full criminal history including, tribal, state, and federal to determine if the individual has ever been convicted of a sex offense in any court. If a sex offense is reflected in the criminal history and the individual is not already registered in any jurisdiction the registering officer shall obtain information concerning that offense and determine if the individual is required to be registered under SORNA and the Sex Offender Registration and Notification Code. For those who are required to register or re-register, the registering officer shall ensure the individual is entered into the registry and all necessary information is obtained.

Offenders Currently on Probation

In addition to reviewing the jail roster, the registering officer shall review the list of individuals on probation in the tribal justice system on a weekly basis to determine if they have prior convictions for sex offenses in any jurisdiction for which they are not presently registered. All tribal, state, and federal criminal records shall be reviewed to make this determination. If a sex offense is reflected in the criminal history and the individual is not already registered in any jurisdiction the registering officer shall obtain information concerning that offense and determine if the individual is required to be registered under SORNA and the Sex Offender Registration and Notification Code. For those who are required to register or re-register, the registering officer shall ensure the individual is entered into the registry and all necessary information is obtained.

Currently Registered Offenders

The registering officer shall review the record of all individuals currently registered as sex offenders with the tribe under existing tribal law and determine if additional information must be obtained or adjustments made to their registration status pursuant to the requirements of the Sex Offender Registration and Notification Code.

Registration Form and Registration Checklist (figures 1 and 2)

All officers in charge of registering sex offenders for the tribe, after having determined an individual is required to register with the tribe and the tier to which they are to be assigned, shall ensure that a registration form is fully completed (see figure 1) and that all information obtained is entered into the sex offender registry within 3 business days. In addition to completion of the registration form, a checklist shall be completed in all cases to ensure all required information has been obtained and procedures have been followed (see figure 2). Both forms shall also be scanned into .pdf format and retained in electronic format on a computer housed with the tribes in an electronic file folder clearly identifying the individual registrant. A paper file shall also be created for each offender and a hard copy of all forms shall be retained in that file.

When entering information into the sex offender registry, the following information shall be included:

- Absconder status. If the offender is in violation of the code or cannot be located, the website must reflect this fact.
- Criminal history. A complete criminal history of any and all offenses for which the offender has been convicted must be included.
- Current offense. The website must also reflect the offense for which the offender is registered with the tribe.
- Employer Address. The name may also be included, but is not required.
- Name of the Offender. This includes all aliases.
- Photograph. A current photograph of the offender must be maintained on the public website.
- Physical description.
- Residential address. This includes anywhere the offender "habitually lives".
- School address. Again, the name may be included but is not required.
- Vehicle information.

Despite the public nature of the registry, the following information is prohibited from being disclosed to the public:

- Non-conviction criminal history.
- Social Security numbers.
- Travel and Immigration document numbers.
- Victim's identity.
- Internet identifiers.

Figure 2
REGISTRATION CHECKLIST

- ☐ **ALL INFORMATION DIGITIZED** (scanned into a .pdf document and housed in an electronic file)
- ☐ **ALL INFORMATION ENTERED IN TO SEX OFFENDER REGISTRY**
- ☐ **CRIMINAL HISTORY**
 - ☐ Date of all arrests
 - ☐ Date of all convictions
 - ☐ Status of parole, probation, or supervised release
 - ☐ Registration status
 - ☐ Outstanding arrest warrants
- ☐ **DATE OF BIRTH**
 - ☐ Actual date of birth
 - ☐ Purported date of birth
 - ☐ All information digitized
- ☐ **DNA SAMPLE**
 - ☐ Taken from offender
 - ☐ Submitted for entry in to Combined DNA Index System (CODIS)
- ☐ **DRIVER'S LICENSE OR ID CARD**
 - ☐ Photocopy of all driver's licenses and identification cards issued to sex offender by a jurisdiction.
- ☐ **EMPLOYMENT INFORMATION**
 - ☐ Name of Employer
 - ☐ Address of Employer
 - ☐ Any place employed or will be employed, including volunteer or unpaid work
 - ☐ Transient or day labor information collected
- ☐ **FINGER AND PALM PRINTS TAKEN (both must be digitized)**
- ☐ **INTERNET IDENTIFIERS**
 - ☐ Email addresses
 - ☐ Instant Message addresses or identifiers
 - ☐ Any other designation or monikers used for self-identification
 - ☐ All designations used for routing or self-identification on the internet

<input type="checkbox"/>	All purported social security numbers
<input type="checkbox"/>	TEMPORARY LODGING INFORMATION (when absent from residence for 3 days or more)
<input type="checkbox"/>	Identifying information (location) of temporary locations
<input type="checkbox"/>	Dates of temporary lodging
<input type="checkbox"/>	If going outside United States, INTERPOL notified
<input type="checkbox"/>	TEXT OF REGISTRATION OFFENSE (text of offense for which convicted and registered must be provided to SORNA database, if not already there)
<input type="checkbox"/>	VEHICLE INFORMATION
<input type="checkbox"/>	License plate number
<input type="checkbox"/>	Registration number
<input type="checkbox"/>	Color, make, model, and year of the vehicle
<input type="checkbox"/>	For all vehicles owned or operated by offender whether for work or personal use, including land vehicles, aircraft, and watercraft.
<input type="checkbox"/>	Where the vehicle is frequently kept

<i>Name of official completing form:</i>	<i>Department:</i>	<i>Date completed:</i>	<i>Date entered into registry:</i>
--	--------------------	------------------------	------------------------------------

Figure 3
SEX OFFENDER ACKNOWLEDGEMENT FORM

1. I have been given a copy of the Sex Offender Registration and Notification Code.
2. Individuals who have been convicted of a qualifying sex offense as outlined in the Sex Offender Registration Code or the federal Sex Offender Registration and Notification Act must immediately appear at the tribal police department in person and register as a sex offender if:
 - a. They were convicted by the tribe of the qualifying offense,
 - b. They were incarcerated by or with the tribe for the qualifying offense,
 - c. They reside within the exterior boundaries of the reservation or otherwise reside on property owned by the tribal jurisdiction in fee or trust regardless of location,
 - d. They are employed (including volunteer work) by the tribe in any capacity or otherwise are employed within the exterior boundaries of the reservation or on property owned by the tribe in fee or trust regardless of location, or
 - e. They are a student, in any capacity, within the exterior boundaries of the reservation or on property owned by the tribe in fee or trust regardless of location.
3. Sex offenders required to register with the tribe shall complete a sex offender registration form and shall otherwise provide the tribal police department with the following information: criminal history, date of birth, DNA samples, driver's licenses, identification cards, passports, and immigration documents, employment information, finger and palm prints, internet identifiers, name, phone numbers, picture, physical description, professional licensing information, address (residential and mailing), school information, social security number, temporary lodging information, conviction offense information, and vehicle information.
4. Pursuant to tribal and federal laws, anyone who is required to register with the tribe shall do so in the following timeframe:
 - a. If incarcerated, before release from imprisonment for the registration offense,
 - b. If not incarcerated, within 3 business days of sentencing for the registration offense, and
 - c. For foreign, federal, and military convictions, a sex offender must appear in person at the tribal police department within 3 business days of establishing a residence on the reservation or tribal property after either release from incarceration or, if not incarcerated, sentencing for purposes of complying with the Sex Offender Registration Code or the federal Sex Offender Registration and Notification Act.
5. All sex offenders required to register with the tribe must immediately appear at the tribal police department in person to update any change in their name, residence (including termination of residence), employment, school attendance, vehicle information, temporary lodging, email addresses, telephone numbers, Instant Messaging addresses, and any other designation used in internet communications, posting, or telephone conversations. In the event of a change in temporary lodging, the sex offender shall immediately notify the jurisdiction in which the sex offender will be temporarily staying.
6. All sex offenders who are employed by the tribe in any capacity or otherwise are employed within the exterior boundaries of the reservation or on property owned by the tribe in fee or trust regardless of location that change or terminate their employment shall immediately appear in person at the tribal police department to update that information.
7. Any sex offender who is a student in any capacity within the exterior boundaries of the reservation or on property owned by the tribe in fee or trust regardless of location change their school, or otherwise terminate their schooling, shall immediately appear in person at the tribal police department to update that information.

Change of Information Form (figure 4)

From time to time sex offenders will change their status. When the change of information relates to their name, residence, employment, school, vehicle, professional licensing, telephone number, email address, IM address, or any other internet identifying related information, they must notify the police or designee of the change (with the exception of professional licensing). Such changes shall be noted, documented, and updated on the Sex Offender Registry.

Any time information changes, it shall be recorded on the form provided. A digitized copy shall be kept in the offender's electronic file. A hard copy shall be kept in the offenders paper file. In addition, the officer shall update the Sex Offender Registry within 3 business days.

In addition, sex offenders are to notify the registering officer if they plan on finding temporary lodging in another jurisdiction. Upon being informed of such intent, the registering officer shall notify the jurisdiction where temporary lodging is being sought by voice mail and letter. In the event temporary lodging is being sought outside the exterior boundaries of United States, the registering officer should contact INTERPOL.

Failure to Appear for Registration and Absconded Offenders (figure 5)

Any time an offender's location cannot be verified, whether by failing to initially register or by apparently leaving their address of record, officers shall abide by the following procedures.

In the case of individuals who fail to initially appear for registration, the officer shall immediately inform the jurisdiction that provided notification that the sex offender was to commence residency, employment, or school attendance with the tribe that the sex offender failed to appear for registration.

In the event an officer receives information that a sex offender has absconded the police shall make an effort to determine if the offender has actually absconded. Upon confirmation of an offender having absconded, the officer shall:

1. Notify tribal police,
2. Update the Sex Offender Registry to reflect that the offender has absconded or is otherwise not capable of being located,
3. Update the NSOR to reflect the sex offender's status as an absconder or is otherwise not capable of being located,
4. Enter the offender in to the National Crime Information Center (NCIC) Wanted Person File, and
5. Request a federal warrant for arrest of the offender by issuing the Absconsion Notification Letter (see figure 5).

Change of Information (figure 6)

Any time an offender changes their residential or mailing address, place or status of employment, place or status of schooling, or vehicle they must inform the tribes. Any time any of this information is changed, a Notice of Updated Information must be generated (see figure 6) and sent to all other jurisdictions where the offender is registered. It must also go to all other jurisdictions where the offender will be required to register due to the change in information.

**MODEL TRIBAL SEX OFFENDER
REGISTRATION CODE/ORDINANCE
(SORNA COMPLIANT TEMPLATE LANGUAGE)**

[NAME OF TRIBE]

MODEL TRIBAL SEX OFFENDER REGISTRATION CODE/ORDINANCE TABLE OF CONTENTS

CHAPTER 1	GENERAL MATTERS	1
SECTION 1.01	Title.....	1
SECTION 1.02	Purpose.	1
SECTION 1.03	Need.....	1
SECTION 1.04	Creation of Registries.	2
CHAPTER 2	TERMINOLOGY AND COVERED OFFENSES	2
SECTION 2.01	Definitions	2
SECTION 2.02	Covered Offenses.....	4
CHAPTER 3	TIERED OFFENSES.....	7
SECTION 3.01	Tier 1 Offenses	7
SECTION 3.02	Tier 2 Offenses	8
SECTION 3.03	Tier 3 Offenses	9
CHAPTER 4	REQUIRED INFORMATION	10
SECTION 4.01	General Requirements	10
SECTION 4.02	Criminal History	10
SECTION 4.03	Date of Birth	11
SECTION 4.04	DNA Sample.....	11
SECTION 4.05	Driver's Licenses, Identification Cards, Passports, and Immigration Documents	11
SECTION 4.06	Employment Information.....	11
SECTION 4.07	Finger and Palm Prints.....	11
SECTION 4.08	Internet Identifiers	12
SECTION 4.09	Name.....	12
SECTION 4.10	Phone Numbers.....	12
SECTION 4.11	Picture.....	12
SECTION 4.12	Physical Description	12
SECTION 4.13	Professional Licensing Information.....	13
SECTION 4.14	Residence Address.....	13
SECTION 4.15	School	13
SECTION 4.16	Social Security Number	13
SECTION 4.17	Temporary Lodging	13
SECTION 4.18	Offense Information.....	14
SECTION 4.19	Vehicle Information	14
SECTION 4.20	Frequency, Duration and Reduction.....	14
SECTION 4.21	Requirements for In Person Appearances.....	15
CHAPTER 5	REGISTRATION.....	15
SECTION 5.01	Where Registration Is Required.....	15
SECTION 5.02	Timing of Registration.....	15
SECTION 5.03	Retroactive Registration	16
SECTION 5.04	Keeping Registration Current	16
SECTION 5.05	Failure To Appear For Registration and Absconding.....	17
CHAPTER 6	PUBLIC SEX OFFENDER REGISTRY WEBSITE.....	18
SECTION 6.01	Website	18
SECTION 6.02	Required and Prohibited Information	18
SECTION 6.03	Community Notification	19
CHAPTER 7	IMMUNITY	20
CHAPTER 8	CRIMES AND CIVIL SANCTIONS.....	20

Deleted: 2

Deleted: 1

Deleted: 2

Deleted: 1

MODEL TRIBAL SEX OFFENDER REGISTRATION CODE

SECTION 1.04 CREATION OF REGISTRIES

- A. Sex Offender Registry. There is hereby established a sex offender registry, which the [responsible agency name] shall maintain and operate pursuant to the provisions of this code, as amended.
- B. Public Sex Offender Registry Website. There is hereby established a public sex offender registry website, which the [responsible agency name] shall maintain and operate pursuant to the provisions of this code, as amended.

CHAPTER 2 TERMINOLOGY AND COVERED OFFENSES

SECTION 2.01 DEFINITIONS

The Definitions below apply to this [Code/Ordinance] only.

- A. Convicted. An adult sex offender is “convicted” for the purposes of this code if the sex offender has been subjected to penal consequences based on the conviction, however the conviction may be styled.

A juvenile offender is “convicted” for purposes of this code if the juvenile offender is either:

1. Prosecuted and found guilty as an adult for a sex offense; or
2. Is adjudicated delinquent as a juvenile for a sex offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in either (a) or (b) of section 2241 of title 18, United States Code), or was an attempt or conspiracy to commit such an offense.

NOTE: See pages 15-16 of the June 2008 “National Guidelines for Sex Offender Registration and Notification” for additional explanation.

- B. Foreign Convictions. A foreign conviction is one obtained outside of the United States.
- C. Employee. The term “employee” as used in this code includes, but is not limited to, an individual who is self-employed or works for any other entity, regardless of compensation. Volunteers of a tribal agency or organization are included within the definition of employee for registration purposes.
- D. Immediate. “Immediate” and “immediately” mean within 3 business days.
- E. Imprisonment. The term “imprisonment” refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include, for example, confinement in a state “prison” as well as in a federal, military, foreign, BIA, private or contract facility, or a local or tribal “jail”. Persons under “house arrest” following conviction of a covered sex offense are required to register pursuant to the provisions of this code during their period of “house arrest”.
- F. Jurisdiction. The term “jurisdiction” as used in this code refers to the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, and any Indian tribe.
- G. Minor. The term “minor” means an individual who has not attained the age of 18 years.
- H. Resides. The term “reside” or “resides” means, with respect to an individual, the location of the individual's home or other place where the individual habitually lives or sleeps.

- T. "Tier 2 Sex Offender". A "tier 2 sex offender", or a "sex offender" designated as "tier 2", is one that has been either convicted of a "tier 2" sex offense as defined in section 3.02, or who is subject to the recidivist provisions of 3.02(B).
- U. "Tier 3 Sex Offender". A "tier 3 sex offender", or a "sex offender" designated as "tier 3", is one that has been either convicted of a "tier 3" sex offense as defined in section 3.03, or who is subject to the recidivist provisions of 3.03(B).

SECTION 2.02 COVERED OFFENSES

Individuals who reside within the exterior boundaries of the reservation or otherwise reside on property owned by the tribe in fee or trust regardless of location, are employed within the exterior boundaries of the reservation or on property owned by the tribe in fee or trust regardless of location, or who attend school within the exterior boundaries of the reservation or on property owned by the tribe in fee or trust regardless of location, that have been convicted of any of the following offenses, or convicted of an attempt or conspiracy to commit any of the following offenses, are subject to the requirements of this code:

NOTE: You may want to alter the above language to conform to the specifics of your tribe or reservation.

A. Tribal offenses.

NOTE: Tribes are encouraged to list the covered tribal offenses.

B. Federal Offenses. A conviction for any of the following, and any other offense hereafter included in the definition of "sex offense" at 42 U.S.C. §16911(5):

1. 18 U.S.C. §1591 (sex trafficking of children),
2. 18 U.S.C. §1801 (video voyeurism of a minor),
3. 18 U.S.C. §2241 (aggravated sexual abuse),
4. 18 U.S.C. §2242 (sexual abuse),
5. 18 U.S.C. §2243 (sexual abuse of a minor or ward),
6. 18 U.S.C. §2244 (abusive sexual contact),
7. 18 U.S.C. §2245 (offenses resulting in death),
8. 18 U.S.C. §2251 (sexual exploitation of children),
9. 18 U.S.C. §2251A (selling or buying of children),
10. 18 U.S.C. §2252 (material involving the sexual exploitation of a minor),
11. 18 U.S.C. §2252A (material containing child pornography),
12. 18 U.S.C. §2252B (misleading domain names on the internet),
13. 18 U.S.C. §2252C (misleading words or digital images on the internet),
14. 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the U.S.),
15. 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity),
16. 18 U.S.C. §2422 (coercion and enticement of a minor for illegal sexual activity),

10. Any conduct that by its nature is a sex offense against a minor, or
11. Any offense similar to those outlined in:
 - a. 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion),
 - b. 18 U.S.C. §1801 (video voyeurism of a minor),
 - c. 18 U.S.C. §2241 (aggravated sexual abuse),
 - d. 18 U.S.C. §2242 (sexual abuse),
 - e. 18 U.S.C. §2244 (abusive sexual contact),
 - f. 18 U.S.C. §2422(b)(coercing a minor to engage in prostitution), or
 - g. 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct).

NOTE: Your tribe may substitute the following definition of “sex offense” in lieu of Section 2.02 A-F or you may want to consider moving the following definition of “sex offense” to the “Definitions Section” of this Code/Ordinance.

“Sex Offense”

A. Except as limited by subparagraph 6 or 7, the term “sex offense” means:

1. A criminal offense that has an element involving a sexual act or sexual contact with another;
2. A criminal offense that is a “specified offense against a minor”. The term “specified offense against a minor” means an offense against a minor that involves any of the following:
 - a. An offense (unless committed by a parent or guardian) involving kidnapping.
 - b. An offense (unless committed by a parent or guardian) involving false imprisonment.
 - c. Solicitation to engage in sexual conduct.
 - d. Use in a sexual performance.
 - e. Solicitation to practice prostitution.
 - f. Video voyeurism as described in 18 U.S.C. §1801.
 - g. Possession, production, or distribution of child pornography.
 - h. Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct.
 - i. Any conduct that by its nature is a sex offense against a minor;
3. A Federal offense (including an offense prosecuted under section 1152 or 1153 of Title 18 of the United States Code) under section 1591, or chapter 109A, 110 (other than section 2257, 2257A, or 2258), or 117, of Title 18 of the United States Code;
4. A military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note); or

- B. Offenses Involving Minors. A “Tier 1” offense also includes any offense for which a person has been convicted by any jurisdiction, local government, or qualifying foreign country pursuant to Section 2.02(C) that involves the false imprisonment of a minor, video voyeurism of a minor, or possession or receipt of child pornography.
- C. Tribal Offenses. Any sex offense covered by this act where punishment was limited to one year in jail shall be considered a “Tier 1” sex offense.

NOTE: Because the definitions of tier 2 and tier 3 are limited to certain offenses punishable by imprisonment for more than one year, and the Indian Civil Rights Act does not permit imprisonment for more than one year based on tribal court convictions, all tribal court convictions are tier 1 offenses. However, sex offenses prosecuted in tribal courts may be serious crimes that would typically carry higher penalties if prosecuted in non-tribal jurisdictions. As the incidents of the tier classifications under SORNA only define minimum standards, your tribe and other jurisdictions are free to premise more extensive registration and notification requirements on tribal court convictions than the minimum SORNA requires for tier 1 offenders, and may wish to do so considering the substantive nature of the offense or other facts. If the tribe does so, the language of 3.01(C) will need to be amended accordingly.

Regardless of which jurisdiction convicts the sex offender, the requirements with respect to the potential length of imprisonment under the statute relate to individual offenses rather than to aggregate penalties. For example, suppose that a sex offender charged in three counts with the commission of sex offenses each of which is punishable by at most one year of imprisonment, and upon conviction is sentenced to three consecutive terms of six months of incarceration. Though the aggregate penalty is 18 months, these convictions do not place the sex offender above tier 1, because each offense was not punishable by more than one year of imprisonment.

- D. Certain Federal Offenses. Conviction for any of the following federal offenses shall be considered a conviction for a “Tier 1” offense:
1. 18 U.S.C. §1801 (video voyeurism of a minor),
 2. 18 U.S.C. §2252 (receipt or possession of child pornography),
 3. 18 U.S.C. §2252A (receipt or possession of child pornography),
 4. 18 U.S.C. §2252B (misleading domain names on the internet),
 5. 18 U.S.C. §2252C (misleading words or digital images on the internet),
 6. 18 U.S.C. §2422(a) (coercion to engage in prostitution),
 7. 18 U.S.C. §2423(b) (travel with the intent to engage in illicit conduct),
 8. 18 U.S.C. §2423(c) (engaging in illicit conduct in foreign places),
 9. 18 U.S.C. §2424 (failure to file factual statement about an alien individual), or
 10. 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct).
- E. Certain Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. §951 note) that is similar to those offenses outlined in Section 3.01(A),(B), or (C) shall be considered a “Tier 1” offense.

SECTION 3.02 TIER 2 OFFENSES

NOTE: If your tribe has deemed certain covered offenses to be tier 2 offenses, the tribal codes/ordinances should be listed in this section.

B. General Offenses. A "Tier 3" offense includes any sex offense for which a person has been convicted, or an attempt or conspiracy to commit such an offense, that involves:

1. Non-parental kidnapping of a minor,
2. A sexual act with another by force or threat,
3. A sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate, or
4. Sexual contact with a minor 12 years of age or younger, including offenses that cover sexual touching of or contact with the intimate parts of the body, either directly or through the clothing.

C. Certain Federal Offenses. Conviction for any of the following federal offenses shall be considered conviction for a "Tier 3" offense:

1. 18 U.S.C. §2241 (a) and (b) (aggravated sexual abuse),
2. 18 U.S.C. §2242 (sexual abuse), or
3. Where the victim is 12 years of age or younger, 18 U.S.C. §2244 (abusive sexual contact).

D. Certain Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. §951 note) that is similar to those offenses outlined in Section 3.03(A),(B), or (C) shall be considered a "Tier 3" offense.

CHAPTER 4 REQUIRED INFORMATION

SECTION 4.01 GENERAL REQUIREMENTS

NOTE: Some of this entire chapter may or may not apply to your tribe depending on any cooperative agreement and/or memorandum of understanding that may be entered into with the state(s).

- A. Duties. A sex offender covered by this code who is required to register with the tribe pursuant to Chapter 5 shall provide all of the information detailed in this chapter to the [responsible agency name], and the [responsible agency name] shall obtain all of the information detailed in this chapter from covered sex offenders who are required to register with the tribe in accordance with this code and shall implement any relevant policies and procedures.
- B. Digitization. All information obtained under this code shall be, at a minimum, maintained by the [responsible agency name] in a digitized format.
- C. Electronic Database. A sex offender registry shall be maintained in an electronic database by the [responsible agency name] and shall be in a form capable of electronic transmission.

SECTION 4.02 CRIMINAL HISTORY

- A. Criminal History. The [responsible agency name] or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's criminal history:

1. The date of all arrests,
2. The date of all convictions,

SECTION 4.08 INTERNET IDENTIFIERS

- A. Internet Names. The [responsible agency name] or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's internet related activity:
1. Any and all email addresses used by the sex offender,
 2. Any and all Instant Message addresses and identifiers,
 3. Any and all other designations or monikers used for self-identification in internet communications or postings, and
 4. Any and all designations used by the sex offender for the purpose of routing or self-identification in internet communications or postings.

SECTION 4.09 NAME

- A. Name. The [responsible agency name] or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's name:
1. The sex offender's full primary given name,
 2. Any and all nicknames, aliases, and pseudonyms regardless of the context in which it is used, and
 3. Any and all ethnic or tribal names by which the sex offender is commonly known. This does not include any religious or sacred names not otherwise commonly known.

SECTION 4.10 PHONE NUMBERS

- A. Phone Numbers. The [responsible agency name] or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's telephone numbers:
1. Any and all land line telephone numbers, and
 2. Any and all cellular telephone numbers.

SECTION 4.11 PICTURE

- A. Photograph. The [responsible agency name] or designee shall obtain, and a covered sex offender shall provide, a current photograph of the sex offender.
- B. Update Requirements. Unless the appearance of a sex offender has not changed significantly, a digitized photograph shall be collected :
1. Every 90 days for Tier 3 sex offenders,
 2. Every 180 days for Tier 2 sex offenders, and
 3. Every year for Tier 1 sex offenders.

SECTION 4.12 PHYSICAL DESCRIPTION

- A. Physical Description. The [responsible agency name] or designee shall obtain, and a covered sex offender shall provide, an accurate description of the sex offender as follows:
1. A physical description,

SECTION 4.18 OFFENSE INFORMATION

- A. Offense Information. The [responsible agency name] or designee shall obtain the text of each provision of law defining the criminal offense(s) for which the sex offender is registered.

SECTION 4.19 VEHICLE INFORMATION

- A. Detailed Information. The [responsible agency name] or designee shall obtain, and a covered sex offender shall provide, the following information related to all vehicles owned or operated by the sex offender for work or personal use including land vehicles, aircraft, and watercraft:
1. License plate numbers,
 2. Registration numbers or identifiers,
 3. General description of the vehicle to include color, make, model, and year, and
 4. Any permanent or frequent location where any covered vehicle is kept.

SECTION 4.20 FREQUENCY, DURATION AND REDUCTION

- A. Frequency. A sex offender who is required to register shall, at a minimum, appear in person at the [responsible agency name] for purposes of verification and keeping their registration current in accordance with the following time frames:
1. For "Tier 1" offenders, once every year for 15 years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.
 2. For "Tier 2" offenders, once every 180 days for 25 years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.
 3. For "Tier 3" offenders, once every 90 days for the rest of their lives.

NOTE: Sections 4.20 (B) and (C), providing for the reduction of two specific categories of registration (defined below), are discretionary for the registration jurisdiction. Therefore, a registration jurisdiction, to include a tribe, can comply with the minimum requirements of SORNA without providing for the possibility of a reduction of an applicable registration period.

- B. Reduction of Registration Periods. A sex offender may have their period of registration reduced as follows:

1. A Tier 1 offender may have his or her period of registration reduced to 10 years if he or she has maintained a clean record for 10 consecutive years;
2. A Tier 3 offender may have his or her period of registration reduced to 25 years if he or she was adjudicated delinquent of an offense as a juvenile that required Tier 3 registration and he or she has maintained a clean record for 25 consecutive years.

- C. Clean Record. For purposes of Chapter 4.20(B) a person has a clean record if:

1. He or she has not been convicted of any offense, for which imprisonment for more than 1 year may be imposed, (NOTE: Tribes may want to change this provision to ensure felonious tribal offenses do not count toward a clean record.)
2. He or she has not been convicted of any sex offense,

3. Within 3 business days of establishing a residence, commencing employment, or becoming a student on lands subject to the jurisdiction of the tribe [NOTE: The preceding bolded phrase will not be appropriate for every tribe. Your tribe's code/ordinance should include language that will address the tribe's particular situation], a sex offender must appear in person to register with [responsible agency name].

B. Duties of [responsible agency name]. The [responsible agency name] shall have policies and procedures in place to ensure the following:

1. That any sex offender incarcerated or sentenced by the tribe for a covered sex offense completes their initial registration with the tribe,
2. That the sex offender reads, or has read to them, and signs a form stating that the duty to register has been explained to them and that the sex offender understands the registration requirement,
3. That the sex offender is registered, and
4. That upon entry of the sex offender's information in to the registry, that information is immediately forwarded to all other jurisdictions in which the sex offender is required to register due to the sex offender's residency, employment, or student status.

SECTION 5.03 RETROACTIVE REGISTRATION

A. Retroactive Registration. The [responsible agency name] shall have in place policies and procedures to ensure the following three categories of sex offenders are subject to the registration and updating requirements of this code:

1. Sex offenders incarcerated or under the supervision of the tribe, whether for a covered sex offense or other crime,
2. Sex offenders already registered or subject to a pre-existing sex offender registration requirement under the tribe's laws, and
3. Sex offenders reentering the justice system due to conviction for any crime.

B. Timing of Recapture. The [responsible agency name] shall ensure recapture of the sex offenders mentioned in Section 5.03(A) within the following timeframe to be calculated from the date of passage of this code:

1. For Tier 1 sex offenders, 1 year,
2. For Tier 2 sex offenders, 180 days, and
3. For Tier 3 sex offenders, 90 days.

SECTION 5.04 KEEPING REGISTRATION CURRENT

A. Jurisdiction of Residency. All sex offenders required to register in this jurisdiction shall immediately appear in person [at responsible agency name] to update any changes to their name, residence (including termination of residency), employment, or school attendance. All sex offenders required to register in this jurisdiction shall immediately inform [responsible agency name] via [agency's preferred mode of communication] of any changes to their temporary lodging information, vehicle information, internet identifiers, or telephone numbers. In the event of a change in temporary lodging, the sex offender and [responsible agency name] shall immediately notify the jurisdiction in which the sex offender will be temporarily staying.

B. Jurisdiction of School Attendance. Any sex offender who is a student in any capacity within lands subject to the jurisdiction of the tribe [NOTE: The preceding bolded phrase will not

- b. Notify the U.S. Marshals Service,
 - c. Seek a warrant for the sex offender's arrest. The U.S. Marshals Service or FBI may be contacted in an attempt to obtain a federal warrant for the sex offender's arrest,
 - d. Update the NSOR to reflect the sex offender's status as an absconder, or is otherwise not capable of being located, and
 - e. Enter the sex offender into the National Crime Information Center Wanted Person File.
- C. Failure to Register. In the event a sex offender who is required to register due to their employment or school attendance status fails to do so or otherwise violates a registration requirement of this code, the [responsible agency name] shall take all appropriate follow-up measures including those outlined in Section 5.05(B). The [responsible agency name] shall first make an effort to determine if the sex offender is actually employed or attending school in lands subject to the tribe's jurisdiction.

CHAPTER 6 PUBLIC SEX OFFENDER REGISTRY WEBSITE

SECTION 6.01 WEBSITE

- A. Website. The [responsible agency name] shall use and maintain a public sex offender registry website.

NOTE: The SMART Office has developed the Tribe and Territory Sex Offender Registry System (TTSORS) which qualifies as a public sex offender registry website under this code. While tribes using this free software provided by the SMART Office will have a public sex offender registry website that complies with SORNA, there is no requirement that a tribe use the TTSORS.

- B. Links. The registry website shall include links to sex offender safety and education resources.
- C. Instructions. The registry website shall include instructions on how a person can seek correction of information that the individual contends is erroneous.
- D. Warnings. The registry website shall include a warning that the information contained on the website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported addresses and that any such action could result in civil or criminal penalties.
- E. Search Capabilities. The registry website shall have the capability of conducting searches by (1) name; (2) county, city, and/or town; and, (3) zip code and/or geographic radius.
- F. Dru Sjodin National Sex Offender Public Website. The tribe shall include in the design of its website all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and shall participate in that website as provided by the Attorney General of the United States.

SECTION 6.02 REQUIRED AND PROHIBITED INFORMATION

- A. Required Information. The following information shall be made available to the public on the sex offender registry website:
- 1. Notice that an offender is in violation of their registration requirements or cannot be located if the sex offender has absconded,
 - 2. All sex offenses for which the sex offender has been convicted,

B. Community Notification. The [responsible agency name] shall ensure there is an automated community notification process in place that ensures the following:

1. Upon a sex offender's registration or update of information with the tribe, the tribe's public sex offender registry website is immediately updated,
2. The tribe's public sex offender registry has a function that enables the general public to request an e-mail notice that will notify them when a sex offender commences residence, employment, or school attendance with the tribe, within a specified zip code, or within a certain geographic radius. This email notice shall include the sex offender's identity so that the public can access the public registry for the new information.

NOTE: In this section, your tribe should include any provisions required to provide notification to tribal members.

CHAPTER 7 IMMUNITY

NOTE: Chapter 7 is not required by SORNA, but may be provisions that your tribe wants to consider including in any Code/Ordinance developed.

- A. No waiver of immunity. Nothing under this chapter shall be construed as a waiver of sovereign immunity for the [insert your tribe's name here], its departments, agencies, employees, or agents.
- B Good faith. Any person acting under good faith of this Title shall be immune from any civil liability arising out of such actions.

CHAPTER 8 CRIMES AND CIVIL SANCTIONS

NOTE: The provisions contained in this chapter are not required by SORNA, but are provisions that your tribe may want to consider including in its sex offender registry code. If criminal punishment is not outlined in the sex offender registration Code/Ordinance, it should be provided for in a tribe's criminal code.

- A. Criminal penalty. Each violation of a provision of this code by a sex offender who is an Indian shall be considered a crime and subject to a period of incarceration of [insert maximum possible term of incarceration here] and a fine of [insert maximum possible fine amount here.]
- B. Civil Penalty. Each violation of a provision of this code by a sex offender who is not an Indian shall be considered a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to the issuance of fines, forfeitures, civil contempt.
- C. Customs and traditions and banishment/exclusion.
- D. Hindrance of sex offender registration
 1. A person is guilty of an offense if they:
 - a. Knowingly harbors or knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a sex offender who is in violation of this Title;
 - b. Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this Title; or
 - c. Provides information to law enforcement agency regarding a sex offender which the person knows to be false.

42 USC § 16901. Declaration of purpose

In order to protect the public from sex offenders and offenders against children, and in response to the vicious attacks by violent predators against the victims listed below, Congress in this Act establishes a comprehensive national system for the registration of those offenders:

(1) Jacob Wetterling, who was 11 years old, was abducted in 1989 in Minnesota, and remains missing.

(2) Megan Nicole Kanka, who was 7 years old, was abducted, sexually assaulted, and murdered in 1994, in New Jersey.

(3) Pam Lychner, who was 31 years old, was attacked by a career offender in Houston, Texas.

(4) Jetseta Gage, who was 10 years old, was kidnapped, sexually assaulted, and murdered in 2005, in Cedar Rapids, Iowa.

(5) Dru Sjodin, who was 22 years old, was sexually assaulted and murdered in 2003, in North Dakota.

(6) Jessica Lunsford, who was 9 years old, was abducted, sexually assaulted, buried alive, and murdered in 2005, in Homosassa, Florida.

(7) Sarah Lunde, who was 13 years old, was strangled and murdered in 2005, in Ruskin, Florida.

(8) Amie Zyla, who was 8 years old, was sexually assaulted in 1996 by a juvenile offender in Waukesha, Wisconsin, and has become an advocate for child victims and protection of children from juvenile sex offenders.

(9) Christy Ann Fornoff, who was 13 years old, was abducted, sexually assaulted, and murdered in 1984, in Tempe, Arizona.

(10) Alexandra Nicole Zapp, who was 30 years old, was brutally attacked and murdered in a public restroom by a repeat sex offender in 2002, in Bridgewater, Massachusetts.

(11) Polly Klaas, who was 12 years old, was abducted, sexually assaulted, and murdered in 1993 by a career offender in California.

(12) Jimmy Ryce, who was 9 years old, was kidnapped and murdered in Florida on September 11, 1995.

(13) Carlie Brucia, who was 11 years old, was abducted and murdered in Florida in February, 2004.

(14) Amanda Brown, who was 7 years old, was abducted and murdered in Florida in 1998.

(15) Elizabeth Smart, who was 14 years old, was abducted in Salt Lake City, Utah in June 2002.

(16) Molly Bish, who was 16 years old, was abducted in 2000 while working as a lifeguard in Warren, Massachusetts, where her remains were found 3 years later.

(17) Samantha Runnion, who was 5 years old, was abducted, sexually assaulted, and murdered in California on July 15, 2002.

42 USC § 16902. Establishment of program

This Act establishes the Jacob Wetterling, Megan Nicole Kanka, and Pam Lychner Sex Offender Registration and Notification Program.

the accused under guidelines or regulations established under section 112.

(C) Offenses involving consensual sexual conduct. An offense involving consensual sexual conduct is not a sex offense for the purposes of this title if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.

(6) Criminal offense. The term "criminal offense" means a State, local, tribal, foreign, or military offense (to the extent specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note)) or other criminal offense.

(7) Expansion of definition of "specified offense against a minor" to include all offenses by child predators. The term "specified offense against a minor" means an offense against a minor that involves any of the following:

- (A) An offense (unless committed by a parent or guardian) involving kidnapping.
- (B) An offense (unless committed by a parent or guardian) involving false imprisonment.
- (C) Solicitation to engage in sexual conduct.
- (D) Use in a sexual performance.
- (E) Solicitation to practice prostitution.
- (F) Video voyeurism as described in section 1801 of title 18, United States Code.
- (G) Possession, production, or distribution of child pornography.
- (H) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct.

(I) Any conduct that by its nature is a sex offense against a minor.

(8) Convicted as including certain juvenile adjudications. The term "convicted" or a variant thereof, used with respect to a sex offense, includes adjudicated delinquent as a juvenile for that offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241 of title 18, United States Code), or was an attempt or conspiracy to commit such an offense.

(9) Sex offender registry. The term "sex offender registry" means a registry of sex offenders, and a notification program, maintained by a jurisdiction.

(10) Jurisdiction. The term "jurisdiction" means any of the following:

- (A) A State.
- (B) The District of Columbia.
- (C) The Commonwealth of Puerto Rico.
- (D) Guam.
- (E) American Samoa.
- (F) The Northern Mariana Islands.
- (G) The United States Virgin Islands.
- (H) To the extent provided and subject to the requirements of section 127, a federally recognized Indian tribe.

(11) Student. The term "student" means an individual who enrolls in or attends an educational institution, including (whether public or private) a secondary school, trade or professional school, and institution of higher education.

(12) Employee. The term "employee" includes an individual who is self-employed or works for any other entity, whether compensated or not.

(13) Resides. The term "resides" means, with respect to an individual, the location of the

42 USC § 16914. Information required in registration

(a) Provided by the offender. The sex offender shall provide the following information to the appropriate official for inclusion in the sex offender registry:

- (1) The name of the sex offender (including any alias used by the individual).
- (2) The Social Security number of the sex offender.
- (3) The address of each residence at which the sex offender resides or will reside.
- (4) The name and address of any place where the sex offender is an employee or will be an employee.
- (5) The name and address of any place where the sex offender is a student or will be a student.
- (6) The license plate number and a description of any vehicle owned or operated by the sex offender.
- (7) Any other information required by the Attorney General.

(b) Provided by the jurisdiction. The jurisdiction in which the sex offender registers shall ensure that the following information is included in the registry for that sex offender:

- (1) A physical description of the sex offender.
- (2) The text of the provision of law defining the criminal offense for which the sex offender is registered.
- (3) The criminal history of the sex offender, including the date of all arrests and convictions; the status of parole, probation, or supervised release; registration status; and the existence of any outstanding arrest warrants for the sex offender.
- (4) A current photograph of the sex offender.
- (5) A set of fingerprints and palm prints of the sex offender.
- (6) A DNA sample of the sex offender.
- (7) A photocopy of a valid driver's license or identification card issued to the sex offender by a jurisdiction.
- (8) Any other information required by the Attorney General.

42 USC § 16915. Duration of registration requirement

(a) Full registration period. A sex offender shall keep the registration current for the full registration period (excluding any time the sex offender is in custody or civilly committed) unless the offender is allowed a reduction under subsection (b). The full registration period is--

- (1) 15 years, if the offender is a tier I sex offender;
- (2) 25 years, if the offender is a tier II sex offender; and
- (3) the life of the offender, if the offender is a tier III sex offender.

(b) Reduced period for clean record.

(1) Clean record. The full registration period shall be reduced as described in paragraph (3) for a sex offender who maintains a clean record for the period described in paragraph (2) by--

- (A) not being convicted of any offense for which imprisonment for more than 1 year may be imposed;
- (B) not being convicted of any sex offense;
- (C) successfully completing any periods of supervised release, probation, and parole; and
- (D) successfully completing of an appropriate sex offender treatment program certified by a

(b) Mandatory exemptions. A jurisdiction shall exempt from disclosure--

- (1) the identity of any victim of a sex offense;
- (2) the Social Security number of the sex offender;
- (3) any reference to arrests of the sex offender that did not result in conviction; and
- (4) any other information exempted from disclosure by the Attorney General.

(c) Optional exemptions. A jurisdiction may exempt from disclosure--

- (1) any information about a tier I sex offender convicted of an offense other than a specified offense against a minor;
- (2) the name of an employer of the sex offender;
- (3) the name of an educational institution where the sex offender is a student; and
- (4) any other information exempted from disclosure by the Attorney General.

(d) Links. The site shall include, to the extent practicable, links to sex offender safety and education resources.

(e) Correction of errors. The site shall include instructions on how to seek correction of information that an individual contends is erroneous.

(f) Warning. The site shall include a warning that information on the site should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported address. The warning shall note that any such action could result in civil or criminal penalties.

42 USC § 16919. National Sex Offender Registry

(a) Internet. The Attorney General shall maintain a national database at the Federal Bureau of Investigation for each sex offender and any other person required to register in a jurisdiction's sex offender registry. The database shall be known as the National Sex Offender Registry.

(b) Electronic forwarding. The Attorney General shall ensure (through the National Sex Offender Registry or otherwise) that updated information about a sex offender is immediately transmitted by electronic forwarding to all relevant jurisdictions.

42 USC § 16920. Dru Sjodin National Sex Offender Public Website

(a) Establishment. There is established the Dru Sjodin National Sex Offender Public Website (hereinafter in this section referred to as the "Website"), which the Attorney General shall maintain.

(b) Information to be provided. The Website shall include relevant information for each sex offender and other person listed on a jurisdiction's Internet site. The Website shall allow the public to obtain relevant information for each sex offender by a single query for any given zip code or geographical radius set by the user in a form and with such limitations as may be

42 USC § 16923. Development and availability of registry management and website software

(a) Duty to develop and support. The Attorney General shall, in consultation with the jurisdictions, develop and support software to enable jurisdictions to establish and operate uniform sex offender registries and Internet sites.

(b) Criteria. The software should facilitate--

- (1) immediate exchange of information among jurisdictions;
- (2) public access over the Internet to appropriate information, including the number of registered sex offenders in each jurisdiction on a current basis;
- (3) full compliance with the requirements of this title; and
- (4) communication of information to community notification program participants as required under section 121.

(c) Deadline. The Attorney General shall make the first complete edition of this software available to jurisdictions within 2 years of the date of the enactment of this Act [enacted July 27, 2006].

42 USC § 16924. Period for implementation by jurisdictions

(a) Deadline. Each jurisdiction shall implement this title before the later of--

- (1) 3 years after the date of the enactment of this Act [enacted July 27, 2006]; and
- (2) 1 year after the date on which the software described in section 123 is available.

(b) Extensions. The Attorney General may authorize up to two 1-year extensions of the deadline.

42 USC § 16925. Failure of jurisdiction to comply

(a) In general. For any fiscal year after the end of the period for implementation, a jurisdiction that fails, as determined by the Attorney General, to substantially implement this title shall not receive 10 percent of the funds that would otherwise be allocated for that fiscal year to the jurisdiction under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.).

(b) State constitutionality.

(1) In general. When evaluating whether a jurisdiction has substantially implemented this title, the Attorney General shall consider whether the jurisdiction is unable to substantially implement this title because of a demonstrated inability to implement certain provisions that would place the jurisdiction in violation of its constitution, as determined by a ruling of the jurisdiction's highest court.

(2) Efforts. If the circumstances arise under paragraph (1), then the Attorney General and the jurisdiction shall make good faith efforts to accomplish substantial implementation of this title and to reconcile any conflicts between this title and the jurisdiction's constitution. In considering whether compliance with the requirements of this title would likely violate the jurisdiction's constitution or an interpretation thereof by the jurisdiction's highest court, the Attorney General

42 USC § 16927. Election by Indian tribes

(a) Election.

(1) In general. A federally recognized Indian tribe may, by resolution or other enactment of the tribal council or comparable governmental body--

(A) elect to carry out this subtitle as a jurisdiction subject to its provisions; or

(B) elect to delegate its functions under this subtitle to another jurisdiction or jurisdictions within which the territory of the tribe is located and to provide access to its territory and such other cooperation and assistance as may be needed to enable such other jurisdiction or jurisdictions to carry out and enforce the requirements of this subtitle.

(2) Imputed election in certain cases. A tribe shall be treated as if it had made the election described in paragraph (1)(B) if--

(A) it is a tribe subject to the law enforcement jurisdiction of a State under section 1162 of title 18, United States Code;

(B) the tribe does not make an election under paragraph (1) within 1 year of the enactment of this Act [enacted July 27, 2006] or rescinds an election under paragraph (1)(A); or

(C) the Attorney General determines that the tribe has not substantially implemented the requirements of this subtitle and is not likely to become capable of doing so within a reasonable amount of time.

(b) Cooperation between tribal authorities and other jurisdictions.

(1) Nonduplication. A tribe subject to this subtitle is not required to duplicate functions under this subtitle which are fully carried out by another jurisdiction or jurisdictions within which the territory of the tribe is located.

(2) Cooperative agreements. A tribe may, through cooperative agreements with such a jurisdiction or jurisdictions--

(A) arrange for the tribe to carry out any function of such a jurisdiction under this subtitle with respect to sex offenders subject to the tribe's jurisdiction; and

(B) arrange for such a jurisdiction to carry out any function of the tribe under this subtitle with respect to sex offenders subject to the tribe's jurisdiction.

42 USC § 16928. Registration of sex offenders entering the United States

The Attorney General, in consultation with the Secretary of State and the Secretary of Homeland Security, shall establish and maintain a system for informing the relevant jurisdictions about persons entering the United States who are required to register under this title. The Secretary of State and the Secretary of Homeland Security shall provide such information and carry out such functions as the Attorney General may direct in the operation of the system.

42 USC § 16929. Immunity for good faith conduct

The Federal Government, jurisdictions, political subdivisions of jurisdictions, and their agencies, officers, employees, and agents shall be immune from liability for good faith conduct under this title.

42 USC § 16901. Declaration of purpose

In order to protect the public from sex offenders and offenders against children, and in response to the vicious attacks by violent predators against the victims listed below, Congress in this Act establishes a comprehensive national system for the registration of those offenders:

(1) Jacob Wetterling, who was 11 years old, was abducted in 1989 in Minnesota, and remains missing.

(2) Megan Nicole Kanka, who was 7 years old, was abducted, sexually assaulted, and murdered in 1994, in New Jersey.

(3) Pam Lychner, who was 31 years old, was attacked by a career offender in Houston, Texas.

(4) Jetseta Gage, who was 10 years old, was kidnapped, sexually assaulted, and murdered in 2005, in Cedar Rapids, Iowa.

(5) Dru Sjodin, who was 22 years old, was sexually assaulted and murdered in 2003, in North Dakota.

(6) Jessica Lunsford, who was 9 years old, was abducted, sexually assaulted, buried alive, and murdered in 2005, in Homosassa, Florida.

(7) Sarah Lunde, who was 13 years old, was strangled and murdered in 2005, in Ruskin, Florida.

(8) Amie Zyla, who was 8 years old, was sexually assaulted in 1996 by a juvenile offender in Waukesha, Wisconsin, and has become an advocate for child victims and protection of children from juvenile sex offenders.

(9) Christy Ann Fornoff, who was 13 years old, was abducted, sexually assaulted, and murdered in 1984, in Tempe, Arizona.

(10) Alexandra Nicole Zapp, who was 30 years old, was brutally attacked and murdered in a public restroom by a repeat sex offender in 2002, in Bridgewater, Massachusetts.

(11) Polly Klaas, who was 12 years old, was abducted, sexually assaulted, and murdered in 1993 by a career offender in California.

(12) Jimmy Ryce, who was 9 years old, was kidnapped and murdered in Florida on September 11, 1995.

(13) Carlie Brucia, who was 11 years old, was abducted and murdered in Florida in February, 2004.

(14) Amanda Brown, who was 7 years old, was abducted and murdered in Florida in 1998.

(15) Elizabeth Smart, who was 14 years old, was abducted in Salt Lake City, Utah in June 2002.

(16) Molly Bish, who was 16 years old, was abducted in 2000 while working as a lifeguard in Warren, Massachusetts, where her remains were found 3 years later.

(17) Samantha Runnion, who was 5 years old, was abducted, sexually assaulted, and murdered in California on July 15, 2002.

42 USC § 16902. Establishment of program

This Act establishes the Jacob Wetterling, Megan Nicole Kanka, and Pam Lychner Sex Offender Registration and Notification Program.

the accused under guidelines or regulations established under section 112.

(C) Offenses involving consensual sexual conduct. An offense involving consensual sexual conduct is not a sex offense for the purposes of this title if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.

(6) Criminal offense. The term "criminal offense" means a State, local, tribal, foreign, or military offense (to the extent specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note)) or other criminal offense.

(7) Expansion of definition of "specified offense against a minor" to include all offenses by child predators. The term "specified offense against a minor" means an offense against a minor that involves any of the following:

- (A) An offense (unless committed by a parent or guardian) involving kidnapping.
- (B) An offense (unless committed by a parent or guardian) involving false imprisonment.
- (C) Solicitation to engage in sexual conduct.
- (D) Use in a sexual performance.
- (E) Solicitation to practice prostitution.
- (F) Video voyeurism as described in section 1801 of title 18, United States Code.
- (G) Possession, production, or distribution of child pornography.
- (H) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct.

(I) Any conduct that by its nature is a sex offense against a minor.

(8) Convicted as including certain juvenile adjudications. The term "convicted" or a variant thereof, used with respect to a sex offense, includes adjudicated delinquent as a juvenile for that offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241 of title 18, United States Code), or was an attempt or conspiracy to commit such an offense.

(9) Sex offender registry. The term "sex offender registry" means a registry of sex offenders, and a notification program, maintained by a jurisdiction.

(10) Jurisdiction. The term "jurisdiction" means any of the following:

- (A) A State.
- (B) The District of Columbia.
- (C) The Commonwealth of Puerto Rico.
- (D) Guam.
- (E) American Samoa.
- (F) The Northern Mariana Islands.
- (G) The United States Virgin Islands.
- (H) To the extent provided and subject to the requirements of section 127, a federally recognized Indian tribe.

(11) Student. The term "student" means an individual who enrolls in or attends an educational institution, including (whether public or private) a secondary school, trade or professional school, and institution of higher education.

(12) Employee. The term "employee" includes an individual who is self-employed or works for any other entity, whether compensated or not.

(13) Resides. The term "resides" means, with respect to an individual, the location of the

42 USC § 16914. Information required in registration

(a) Provided by the offender. The sex offender shall provide the following information to the appropriate official for inclusion in the sex offender registry:

- (1) The name of the sex offender (including any alias used by the individual).
- (2) The Social Security number of the sex offender.
- (3) The address of each residence at which the sex offender resides or will reside.
- (4) The name and address of any place where the sex offender is an employee or will be an employee.
- (5) The name and address of any place where the sex offender is a student or will be a student.
- (6) The license plate number and a description of any vehicle owned or operated by the sex offender.
- (7) Any other information required by the Attorney General.

(b) Provided by the jurisdiction. The jurisdiction in which the sex offender registers shall ensure that the following information is included in the registry for that sex offender:

- (1) A physical description of the sex offender.
- (2) The text of the provision of law defining the criminal offense for which the sex offender is registered.
- (3) The criminal history of the sex offender, including the date of all arrests and convictions; the status of parole, probation, or supervised release; registration status; and the existence of any outstanding arrest warrants for the sex offender.
- (4) A current photograph of the sex offender.
- (5) A set of fingerprints and palm prints of the sex offender.
- (6) A DNA sample of the sex offender.
- (7) A photocopy of a valid driver's license or identification card issued to the sex offender by a jurisdiction.
- (8) Any other information required by the Attorney General.

42 USC § 16915. Duration of registration requirement

(a) Full registration period. A sex offender shall keep the registration current for the full registration period (excluding any time the sex offender is in custody or civilly committed) unless the offender is allowed a reduction under subsection (b). The full registration period is--

- (1) 15 years, if the offender is a tier I sex offender;
- (2) 25 years, if the offender is a tier II sex offender; and
- (3) the life of the offender, if the offender is a tier III sex offender.

(b) Reduced period for clean record.

(1) Clean record. The full registration period shall be reduced as described in paragraph (3) for a sex offender who maintains a clean record for the period described in paragraph (2) by--

- (A) not being convicted of any offense for which imprisonment for more than 1 year may be imposed;
- (B) not being convicted of any sex offense;
- (C) successfully completing any periods of supervised release, probation, and parole; and
- (D) successfully completing of an appropriate sex offender treatment program certified by a

(b) Mandatory exemptions. A jurisdiction shall exempt from disclosure--

- (1) the identity of any victim of a sex offense;
- (2) the Social Security number of the sex offender;
- (3) any reference to arrests of the sex offender that did not result in conviction; and
- (4) any other information exempted from disclosure by the Attorney General.

(c) Optional exemptions. A jurisdiction may exempt from disclosure--

- (1) any information about a tier I sex offender convicted of an offense other than a specified offense against a minor;
- (2) the name of an employer of the sex offender;
- (3) the name of an educational institution where the sex offender is a student; and
- (4) any other information exempted from disclosure by the Attorney General.

(d) Links. The site shall include, to the extent practicable, links to sex offender safety and education resources.

(e) Correction of errors. The site shall include instructions on how to seek correction of information that an individual contends is erroneous.

(f) Warning. The site shall include a warning that information on the site should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported address. The warning shall note that any such action could result in civil or criminal penalties.

42 USC § 16919. National Sex Offender Registry

(a) Internet. The Attorney General shall maintain a national database at the Federal Bureau of Investigation for each sex offender and any other person required to register in a jurisdiction's sex offender registry. The database shall be known as the National Sex Offender Registry.

(b) Electronic forwarding. The Attorney General shall ensure (through the National Sex Offender Registry or otherwise) that updated information about a sex offender is immediately transmitted by electronic forwarding to all relevant jurisdictions.

42 USC § 16920. Dru Sjodin National Sex Offender Public Website

(a) Establishment. There is established the Dru Sjodin National Sex Offender Public Website (hereinafter in this section referred to as the "Website"), which the Attorney General shall maintain.

(b) Information to be provided. The Website shall include relevant information for each sex offender and other person listed on a jurisdiction's Internet site. The Website shall allow the public to obtain relevant information for each sex offender by a single query for any given zip code or geographical radius set by the user in a form and with such limitations as may be

42 USC § 16923. Development and availability of registry management and website software

(a) Duty to develop and support. The Attorney General shall, in consultation with the jurisdictions, develop and support software to enable jurisdictions to establish and operate uniform sex offender registries and Internet sites.

(b) Criteria. The software should facilitate--

- (1) immediate exchange of information among jurisdictions;
- (2) public access over the Internet to appropriate information, including the number of registered sex offenders in each jurisdiction on a current basis;
- (3) full compliance with the requirements of this title; and
- (4) communication of information to community notification program participants as required under section 121.

(c) Deadline. The Attorney General shall make the first complete edition of this software available to jurisdictions within 2 years of the date of the enactment of this Act [enacted July 27, 2006].

42 USC § 16924. Period for implementation by jurisdictions

(a) Deadline. Each jurisdiction shall implement this title before the later of--

- (1) 3 years after the date of the enactment of this Act [enacted July 27, 2006]; and
- (2) 1 year after the date on which the software described in section 123 is available.

(b) Extensions. The Attorney General may authorize up to two 1-year extensions of the deadline.

42 USC § 16925. Failure of jurisdiction to comply

(a) In general. For any fiscal year after the end of the period for implementation, a jurisdiction that fails, as determined by the Attorney General, to substantially implement this title shall not receive 10 percent of the funds that would otherwise be allocated for that fiscal year to the jurisdiction under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.).

(b) State constitutionality.

(1) In general. When evaluating whether a jurisdiction has substantially implemented this title, the Attorney General shall consider whether the jurisdiction is unable to substantially implement this title because of a demonstrated inability to implement certain provisions that would place the jurisdiction in violation of its constitution, as determined by a ruling of the jurisdiction's highest court.

(2) Efforts. If the circumstances arise under paragraph (1), then the Attorney General and the jurisdiction shall make good faith efforts to accomplish substantial implementation of this title and to reconcile any conflicts between this title and the jurisdiction's constitution. In considering whether compliance with the requirements of this title would likely violate the jurisdiction's constitution or an interpretation thereof by the jurisdiction's highest court, the Attorney General

42 USC § 16927. Election by Indian tribes

(a) Election.

(1) In general. A federally recognized Indian tribe may, by resolution or other enactment of the tribal council or comparable governmental body--

(A) elect to carry out this subtitle as a jurisdiction subject to its provisions; or

(B) elect to delegate its functions under this subtitle to another jurisdiction or jurisdictions within which the territory of the tribe is located and to provide access to its territory and such other cooperation and assistance as may be needed to enable such other jurisdiction or jurisdictions to carry out and enforce the requirements of this subtitle.

(2) Imputed election in certain cases. A tribe shall be treated as if it had made the election described in paragraph (1)(B) if--

(A) it is a tribe subject to the law enforcement jurisdiction of a State under section 1162 of title 18, United States Code;

(B) the tribe does not make an election under paragraph (1) within 1 year of the enactment of this Act [enacted July 27, 2006] or rescinds an election under paragraph (1)(A); or

(C) the Attorney General determines that the tribe has not substantially implemented the requirements of this subtitle and is not likely to become capable of doing so within a reasonable amount of time.

(b) Cooperation between tribal authorities and other jurisdictions.

(1) Nonduplication. A tribe subject to this subtitle is not required to duplicate functions under this subtitle which are fully carried out by another jurisdiction or jurisdictions within which the territory of the tribe is located.

(2) Cooperative agreements. A tribe may, through cooperative agreements with such a jurisdiction or jurisdictions--

(A) arrange for the tribe to carry out any function of such a jurisdiction under this subtitle with respect to sex offenders subject to the tribe's jurisdiction; and

(B) arrange for such a jurisdiction to carry out any function of the tribe under this subtitle with respect to sex offenders subject to the tribe's jurisdiction.

42 USC § 16928. Registration of sex offenders entering the United States

The Attorney General, in consultation with the Secretary of State and the Secretary of Homeland Security, shall establish and maintain a system for informing the relevant jurisdictions about persons entering the United States who are required to register under this title. The Secretary of State and the Secretary of Homeland Security shall provide such information and carry out such functions as the Attorney General may direct in the operation of the system.

42 USC § 16929. Immunity for good faith conduct

The Federal Government, jurisdictions, political subdivisions of jurisdictions, and their agencies, officers, employees, and agents shall be immune from liability for good faith conduct under this title.



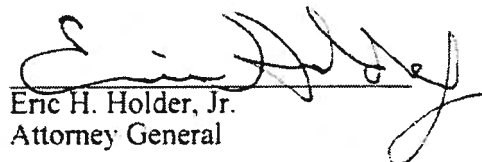
Office of the Attorney General
Washington, D.C.

ORDER NO.

**ONE-YEAR EXTENSION OF DEADLINE FOR
JURISDICTIONS TO IMPLEMENT THE
SEX OFFENDER REGISTRATION AND NOTIFICATION ACT**

Pursuant to the authority vested in the Attorney General by law, including 42 U.S.C. § 16924(b), I hereby authorize a one-year extension of the deadline established pursuant to 42 U.S.C. § 16924(a) for jurisdictions to implement the Sex Offender Registration and Notification Act, Pub. L. No. 109-248, tit. I (2006).

May 26, 2009
Date


Eric H. Holder, Jr.
Attorney General

Subject: Sex Offender Registration and Notification Act: Comprehensive One-Year Extension for Compliance

The final National Guidelines for SORNA [73 Fed. Reg. 38030 (July 2, 2008)] set forth the standards to be applied in determining whether a jurisdiction has substantially implemented SORNA's requirements and charge the SMART Office with responsibility for making that determination. The SMART Office has also been delegated responsibility for determining whether a jurisdiction has provided enough support to justify the grant of an extension.

To date, a number of jurisdictions have been granted extensions based on their progress toward implementing the SORNA provisions: 49 out of 253 registration jurisdictions; that is, 23 states, two territories and 24 tribes. The SMART Office anticipates that additional jurisdictions intend to apply—and that more extensions will be granted—by April 27, 2009, which is their suggested date for extension request submissions so that they have sufficient time to review the material before July 27, 2009, the first statutory compliance date for extension determinations.

While we are pleased with the movement of jurisdictions toward SORNA compliance and the engagement of so many jurisdictions, there are important reasons to consider a unilateral extension of the July 27, 2009 deadline for all jurisdictions.

A March 19, 2009 letter to the Attorney General from Senators Leahy and Spector and from Representatives Conyers and Smith explicitly requests that the Attorney General exercise his statutory authority “to grant a one-year extension for all states and jurisdictions at this time, without requiring individual requests.” The letter cites several reasons for their request, including that: (1) despite significant efforts by many state legislatures and other jurisdictional offices, no jurisdiction has been able to meet the statutory requirements due to unforeseen difficulties in implementing the law; (2) the delay to July 1, 2008 in the issuance by the Department of the SORNA final Guidelines hampered the ability of registration jurisdictions to draft legislation and/or procedures which would substantially implement SORNA; and, (3) implementing the SORNA provisions requires significant added costs, which are now even more burdensome due to the economy. In addition, key stakeholder organizations from both ends of the political spectrum support this request for an overall extension.

While most states will apply for and receive the extension by the deadline, it remains prudent for the Attorney General to issue the comprehensive extension without the requirement for individual requests. This is particularly important for a few of the states and territories, and the majority of the tribal jurisdictions who are extremely ill-prepared to move forward with compliance. Further, by issuing the comprehensive extension, it serves to demonstrate the Department's understanding of the complexity of compliance for many jurisdictions.

For those jurisdictions that have not requested an extension prior to the blanket extension being granted, OJP will encourage them to submit a status report or update at some point this year.

Other than the need for additional time—and funding for compliance, we have heard from many jurisdictions and national stakeholder organizations that significant compliance challenges remain. The most serious of these concerns is the regulation issued by the Department regarding retroactive application of the registration requirements, and the statute's application to



Digitized Fingerprints and Palm Prints

The National Guidelines for Sex Offender Registration and Notification require that jurisdictions maintain certain registration information in digital format in order to facilitate immediate access and transmittal of information to various entities. Fingerprints and palm prints are required to be maintained in a digital form. This digital requirement has raised a concern among jurisdictions that they must purchase large quantities of costly digital print-taking equipment to come into substantial compliance with SORNA.

To substantially comply with SORNA, **jurisdictions are *NOT* required to use digital print-taking devices to obtain registered sex offenders' prints. Rather, jurisdictions may choose to take rolled, inked prints, scan the prints and upload those prints for inclusion on their registries.** Both scanned inked prints and digitally taken prints meet SORNA's immediate transmittal requirement. Digitally taken prints and scanned inked prints each have pros and cons, which will be discussed in turn to provide guidance to jurisdictions in selecting their preferred method.

Digital Print-Taking Equipment

The primary benefit of using digital print-taking equipment is that it immediately alerts the user as to whether the print will be accepted by the Integrated Automated Fingerprint Identification System (IAFIS or AFIS), which is run by the Criminal Justice Information Services (CJIS) of the FBI. Digital print-taking equipment contains software that can be programmed to notify the user immediately when a print does or does not meet a programmed standard, such as the standard for acceptance by AFIS. While submission to AFIS is not a requirement under SORNA or the final guidelines, jurisdictions are encouraged to consider the benefits of submission of registered sex offenders' prints to AFIS.

Rolled, Inked and Scanned Prints

Rolled, inked and scanned prints also can be submitted to AFIS. However, because the official taking the print gets no immediate feedback regarding the quality of the inked print, AFIS frequently rejects them due to poor quality. Because rolled, inked prints are often scanned and submitted to AFIS after the subject of the prints has left the location, rejection of the prints by AFIS would necessitate requiring the sex offender to return in order to re-take the prints should the jurisdiction want to submit them to AFIS. Readable rolled, inked prints are preferred by forensic print examiners, however. In situations where unknown prints need to be compared to prints in a jurisdiction's registry, such as in the case of an abduction or criminal investigation, comparison to rolled, inked prints may be preferable.

Quality Standards

If your jurisdiction is interested in purchasing a scanner or digital print-taking equipment for uploading and transferring prints, the SMART Office encourages jurisdictions to consider issues of quality. For more information on quality standards, please see <http://www.fbibiospecs.org/fbibiometric/iafis.html>.

Solutions – Next steps

Problem #1

- Runaway violence in the home is a nationwide problem and more prevalent in poor communities like most Indian reservations.
- Domestic violence must be reduced and eliminated – perpetrators need to go to jail. If they don't go to jail, they will do it again and again.
- Not just a police problem – it's a community problem, a public health and public safety problem!!

Problem #2

Contribution of PL 280 Juris to revictimization of D/V victims because of NO police and other services.

Possibilities to Consider

- PL280 itself does not cause D/V.
- Consider institutional racism – police
- Bad intergovernmental communication
- Educational needs – Families, community wide, police, courts about violence (define)
- Protocols and agreements (written)
- Changing attitudes – good will
- Legislative cures – repeal PL 280
- Status Quo – and improve tribal governments and address racism