

# TRIBAL PROTECTION ORDERS

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**Enforcing protection orders generally and for VAWA Special Domestic Violence Criminal Jurisdiction over non-Indian (SDVCJ) cases**



NATIONAL COUNCIL OF  
JUVENILE AND FAMILY COURT JUDGES



# Presenters

- Hon. Steven D. Aycock- Judge-in-Residence, National Council of Juvenile and Family Court Judges
- Honorable Kelly Gaines Stoner, Victim Advocacy Legal Specialist, Tribal Law and Policy Institute Judge, Seminole Nation of Oklahoma

# LEARNING OBJECTIVES

- Identify VAWA 2013 Full Faith and Credit Required Language for Protection Orders
- Identify important civil/criminal jurisdictional concerns related to enforcing Protection Orders in Tribal Courts
- Contrast civil and criminal remedies for Protection Order Violations (not including civil/criminal contempt, which will be next week's webinar)

# BENEFITS OF PROTECTION ORDERS

- Sets forth clear commands from the Court
- Issued with victim safety in mind
- Set parameters of acceptable behavior for the batterer as determined by the Court
- Takes some power and control away from the batterer
- Used to hold batterers accountable

# Protection Order Full Faith and Credit Requirements

- Subject matter jurisdiction
- Personal jurisdiction
- Notice and opportunity to be heard
- Ex parte order – will be given notice and opportunity within reasonable time
- Protection Order has not expired

# ENFORCING PROTECTION ORDERS

Enforcement of protection orders is directly tied to recognition of a tribe's sovereign powers and to keeping tribal citizens safe:

- Utilize creative civil remedies over non-member Indians and non-Indians
- Utilize TLOA to loosen federal restrictions on tribal court sentencing authority
- Utilize tribal criminal codes to hold Indian violators of Protection Orders accountable
- Utilize Special Domestic Violence Criminal Jurisdiction to hold non-Indian offenders accountable

# Enforcement of Protection Orders

- Civil Contempt (coercive to force compliance)
- Protection Order violations can be enforced through:
- Criminal prosecution (the violation is a crime)
- Criminal Contempt (willful violation of a term that can no longer be fulfilled)
- Other means

# Jurisdiction

- “(e) Tribal Court Jurisdiction.—For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to **issue and** enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, **in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise within the authority of the Indian tribe.**”

18 USC 2265



# CIVIL JURISDICTION

- U.S. Supreme Court has restricted tribal civil jurisdiction over non-Indians and non-member Indians.
- The Supreme Court holds that tribes do not have civil jurisdiction over non-Indians and non-member Indians on fee lands unless:
  - ***a) the parties entered into a consensual relationship with the tribe or its members or***
  - ***b) the conduct threatens or has some direct effect on the political integrity, economic security or health or welfare of the tribe.***

# TRIBAL CIVIL JURISDICTION

- Requires a finding of member or non-member of the Tribe.
- If the scenario includes any individual other than a member, be sure to include language in the jurisdictional section of the Order that meets one or both of the Montana prongs.

# EVERY jurisdiction *both* enforcing and issuing jurisdiction!

## ISSUING

- Issue orders that will be carried to other jurisdictions & require enforcement there
- Should issue clear orders to facilitate enforcement & protect residents when they go to other jurisdictions

## ENFORCING

- (Law Enforcement & Courts)
- Court determines whether order violated under law of issuing jurisdiction
- Court uses enforcing state process & punishment for violations

# Which Jurisdiction's Laws Apply?

## The **ISSUING** Jurisdiction Determines:

- ✓ whom the order protects
- ✓ terms and conditions of the order
- ✓ duration

# Which Jurisdiction's Laws Apply?

## The **ENFORCING** Jurisdiction Determines:

- ✓ how order is enforced (e.g. whether it is contempt of court or crime)
- ✓ the arrest authority of responding law enforcement
- ✓ detention & notification procedures
- ✓ penalties & sanctions for violations

# CIVIL ENFORCEMENT ADVANTAGES

- Demonstrate a violation by the preponderance of the evidence (criminal is beyond a reasonable doubt)
- Meet civil due process requirements of the tribal Code (criminal due process requirements are usually much stricter)

# CREATIVE CIVIL REMEDIES

- Fines, attorneys fees and costs
- Restitution
- Forfeiture of real/personal property
- Exclusion
- Civil contempt of court
- Civil commitment
- Civil arrest

# CREATIVE CIVIL REMEDIES

- Custom and tradition:
- Providing deer meat to family or extended family
- Providing access to equipment (log splitting or providing so many cords of wood)
- Ditch digging for water
- Pay for ceremonies or bring items to ceremonies
- Shaming



# CREATIVE CIVIL REMEDIES

- Other tribal civil regulatory remedies:
- Removing name of batterer from tribal lease
- Restricting access of batterer's access to tribal benefits
- Restricting access to business license in Indian Country
- Restricting hunting/fishing privileges
- Exclusion (total or partial)
- Revocable easements for non-Indians who live on fee lands

## THE POWER TO ENFORCE A TRIBAL PROTECTION ORDER OVER INDIAN VIOLATORS

- Tribes have criminal jurisdiction over all Indians who commit crimes in their Indian country (pursuant to the applicable tribal code) *US v. Lara*, 541 US 193 (2004).

# VAWA 2013: The Power To Enforce A Tribal Protection Order Against non-Indian Violators

- [VAWA 2013](#) recognizes tribal inherent criminal jurisdiction over *non-Indians* who commit certain acts of domestic violence and protection order violations for those tribes meeting the requirements of [VAWA 2013](#) (set out in slide below)

# VAWA 2013 SECTION 1304(C)

- A tribe may exercise SDVCJ over a defendant for:
  - An act that occurs in the Indian country of the tribe
  - Violates a portion of the protection order that meets the VAWA full faith and credit requirements that:
  - Prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to another person protected by the terms of the order.

## VAWA VIOLATIONS OF A PROTECTION ORDER 25 U.S.C. 1304

- For purposes of a violation of a protection order under SDVCJ, the term victim means a person specifically protected by a protection order that the defendant allegedly violated.
- Violation of a Protection order may include **CRIMES OF CHILD ABUSE OR ELDER ABUSE AND CRIMES BETWEEN TWO STRANGERS (INCLUDING SEXUAL ASSAULTS)**. (See Federal Register/Vol. 78, No. 230, Friday, November 29, 2013)




# VAWA 2013 SECTION 1304(C) Protection Order Requirements

- Was issued against the defendant,
- Is enforceable by the participating tribe, and
- Is consistent with section 2256(b) of the title 18, United States Code.

# What VAWA 2013 Section 904 Does NOT Cover











- Victim and Defendant are both non-Indian - A tribe may not exercise special domestic violence criminal jurisdiction if neither the defendant nor the alleged victim is an Indian.
- Non-Indian Defendant Lacks Sufficient Ties to the Indian Tribe
  - Defendant must either
    - Reside in the Indian country of the participating tribe;
    - Be employed in the Indian country of the participating tribe; or
    - Be a spouse, intimate partner, or dating partner of a tribal member, or an Indian who resides in the Indian country of the participating tribe.
- The crime did not take place in the Indian Country of a participating tribe
- Tribe chooses not to exercise this VAWA 2013 section 904 jurisdiction









# Limitations on Utilizing TLOA Enhanced Sentencing and/or VAWA Special Domestic Violence Criminal Jurisdiction





Limitations	TLOA	VAWA
<p><u>Particular Offenses Only:</u>            Defendant must either (1) previously have been convicted of same or comparable offense by any jurisdiction in U.S.; or (2) is being prosecuted for a “felony” (an offense that would be punishable by more than 1 year imprisonment if prosecuted by U.S. or any of the States).</p>		
<p><u>Particular Offenses Only:</u>            Defendant must be prosecuted for either (1) domestic violence, (2) dating violence, or (3) violation of a protection order.</p>		
<p><u>Particular Defendants Only:</u>            Defendant must have sufficient ties to the community, which could be either (1) residence on the reservation, (2) employment on the reservation, or (3) a relationship with a tribal member or Indian resident.</p>		



# Due Process Protections Required by TLOA and/or VAWA

TLOA and VAWA Due Process Requirements		TLOA	VAWA
1.	Defendants are provided with effective assistance of counsel equal to at least that guaranteed in the U.S. Constitution.*		
2.	Tribal government provides, at their expense, to an indigent defendant a defense attorney licensed to practice by any jurisdiction in the United States.*		
3.	Defense attorney is licensed by a jurisdiction that applies appropriate licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.*		
4.	Judges presiding over criminal proceedings subject to enhanced sentencing/non-Indian defendants have sufficient legal training to preside over criminal trials.*		
5.	Any judge presiding over criminal proceedings subject to enhanced sentencing/non-Indian defendants are licensed to practice law by any jurisdiction in the United States.*		

TLOA and VAWA Due Process Requirements		TLOA	VAWA
6.	The tribe's criminal law, rules of evidence, and rules of criminal procedure are made available to the public prior to charging the defendant.*		
7.	Tribal court maintains a record of the criminal proceeding, including an audio or other recording.*		
8.	Any defendant sentenced to greater than 1-year imprisonment to be served in a tribal facility, that facility must pass the BIA jail standards for long-term incarceration.		
9.	Tribal court provides the defendant the right to a trial by an impartial jury.		
10.	Tribal court ensures that the jury pool reflects a fair cross section of the community.		
11.	Tribal court ensures that juries are drawn from sources that do not systematically exclude any distinctive group in the community, including non-Indians.		

TLOA and VAWA Due Process Requirements		TLOA	VAWA
12.	Tribal court ensures that anyone detained under the special domestic violence criminal jurisdiction is “timely notified” of his/her rights and responsibilities.		
13.	Tribal court ensures that a defendant is notified of their right to file “a petition for a writ of <i>habeas corpus</i> in a court of the United States.”		
14.	Tribal court ensures that “all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise special domestic violence criminal jurisdiction over the defendant” are provided.		
15.	Tribal court ensures that “all applicable rights under the special domestic violence criminal jurisdiction provisions” are provided.		

- Tribal Jurisdictional Charts and info: <http://www.tribal-institute.org/lists/pl280.htm>; <http://www.tribal-institute.org/lists/jurisdiction.htm>; www. Tribal protectionorders.com
- Confidentiality for tribal victims: <http://www.tribal-institute.org/download/NativeVictimsSexualAssault.pdf>; <http://www.niwrc.org/resources/webinars>
- Tribal Victim Rights: [www.victimlaw.org](http://www.victimlaw.org); [http://www.ncai.org/tribal-vawa/webinars/Webinar\\_PPT\\_RE\\_Victim\\_Rights\\_Part\\_I.pdf](http://www.ncai.org/tribal-vawa/webinars/Webinar_PPT_RE_Victim_Rights_Part_I.pdf)
- Tribal Protection Orders: [www.tribalprotectionorders.org](http://www.tribalprotectionorders.org)
- VAWA 2013: [http://tribal-institute.org/lists/vawa\\_2013.htm](http://tribal-institute.org/lists/vawa_2013.htm); <http://www.ncai.org/tribal-vawa>
- Sexual Assault: <http://niccsa.org/>
- Sex Trafficking in Indian country: [www.tribalcoalitions.org](http://www.tribalcoalitions.org)
- Victim Services for sex trafficking victims: [www.tribalcoalitions.org](http://www.tribalcoalitions.org)
- Violence Against Tribal Women and Children: Ending Violence So Children Can Thrive: [www.justice.gov/defendingchildhood](http://www.justice.gov/defendingchildhood)

# How Can I Find More Information and Resources??

http://tribal-institute.org/lists/vawa

The Violence Again... x Federal Law: Full Faith ... Staff Power Points

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tribal Court CLEARINGHOUSE project of the Tribal Law and Policy Institute

Tribal Law Federal Law State Law Topics Program Resources Native Resources

## Violence Against Women Act - Title IX: Safety for Indian Women

Website Resource for Implementing the Tribal Provisions of VAWA: [www.ncsl.org/Tribal-vawa](http://www.ncsl.org/Tribal-vawa)

Following Tribes' Pilot Project applications were granted by the Department of Justice on February 6, 2014:

- Federated Tribes of the Umatilla Indian Reservation (in Oregon)
  - Letter to Umatilla
  - Application Questionnaire
  - Court Directive
  - Court Code
  - Criminal Code
  - SB412 Implementation Code (powers of law enforcement officers)
  - Sex Offender Registration Code
  - Rules of Evidence
- Yavapai Tribe of Arizona
  - Letter to Pasqua Yavapai
  - Application Questionnaire
- Clallam Tribes of Washington
  - Letter to Tulalip
  - Application Questionnaire
  - Exhibits

Violence Against Women Act (VAWA) was reauthorized for the third time on March 7, 2013. ([Violence Against Women Reauthorization Act of 2013, S. 47, 113th Congress, 2013-2015.](#)) VAWA of 2013 includes Title IX—Safety for Indian Women. Under its provisions, Title IX of VAWA of 2013 authorized "special domestic violence criminal jurisdiction." This jurisdiction authorizes tribes to criminally prosecute non-Indians for the crimes of domestic violence, dating violence, and the violation of protection orders. However, in order for tribes to utilize this criminal jurisdiction, tribes must provide certain enumerated due process protections, including most of the protections required in the Tribal Law and Order Act.

- Introduction to Violence Against Women Act Reauthorization - Title IX
- Special Domestic Violence Criminal Jurisdiction
- Law Takes Effect March 2015
- Due Process Protection Requirements
- Special Rule for Alaska
- Applicability of Other Federal Laws
- Constitutionality of Title IX
- Past VAWA Acts

QUICK LINKS

- Tribal Law and Policy Institute
- Institute Publications
- Institute Webinars
- Contact the Institute
- Institute Philosophies/Approach to Training
- About the Clearinghouse
- Tribal Court Mentors Circle

Federal Agencies

- Administration for Children and Families (ACF)
- Administration for Native Americans (ANA)
- American Indian Environmental Office
- BIA Office of Justice Services
- Bureau of Indian Affairs (BIA)
- Bureau of Indian Education
- Bureau of Justice Assistance (BJA)
- HUD's Office of Native American Programs (ONAP)
- Indian Law and Order Commission (ILOC)
- Office for Victims of Crime

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# [www.ncai.org/tribal-vawa](http://www.ncai.org/tribal-vawa)

The screenshot shows a web browser window with the address bar displaying [www.ncai.org/tribal-vawa](http://www.ncai.org/tribal-vawa). The browser's search bar contains the text "heather mizeur". The website's navigation bar includes links for "NCAI Home", "Support Our Work", "Contact Us", and "NCAI". Below this, a secondary navigation bar features "GETTING STARTED", "PILOT PROJECT & ITWG", "RESOURCES", and "UPDATES & EVENTS".

The main content area features the NCAI logo on the left, which includes the text "National Congress of American Indians". To the right of the logo is the main heading "Tribal Implementation of VAWA" and the subtitle "Resource Center for Implementing Tribal Provisions of the Violence Against Women Act (VAWA)".

Below the heading is a large video player. The video frame shows two women in traditional Native American attire, one wearing a purple scarf and the other a green top with a large woven hat. A text overlay on the video reads: "Now our most important work begins." Below the video frame, the text "What you need to know to implement VAWA." is displayed. At the bottom of the page, a caption reads: "Resources to help you get started on implementing the Violence Against Women Act's tribal".

# www.tribalprotectionorder.org



Tribal Protection Order Resources

An online resource for drafting and enforcement of tribal protection orders.  
Tribal Protection Order Resources is a project of the Tribal Law and Policy Institute.

Home   Drafting Protection Orders   Enforcing Protection Orders   Resources   Trainings and Events

## Home

This website is intended to serve as an online resource pertaining to drafting and enforcement of tribal protection orders. Note that each tribe is unique with respect to tribal constitutions and codes. The reader should consult the specific tribal constitution and tribal codes for additional requirements regarding drafting and enforcement of tribal protection orders.

### 1. What is a protection order?

Protection orders may be known by a variety of names to include injunctions, restraining orders, civil restraining order or victim protection order just to name a few. A protection order is a legal document that is available to victims of domestic violence in most jurisdictions. A protection order is a legal order issued by a court to protect a certain person from abuse. Statutes usually require a certain relationship between the petitioner and defendant that will vary from jurisdiction to jurisdiction. Protection orders can be either civil or criminal and protection order remedies may vary from jurisdiction to jurisdiction depending upon the law of the issuing jurisdiction. Enforcement of violations of a protection order may also be civil and/or criminal in nature.

### *Disclaimer*

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# Questions?