



Establishing Tribal Domestic Violence Courts and Dockets

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Learning Objectives

- Identify jurisdictional issues that may affect the civil and criminal legal representation in tribal court;
- Identify benefits of a domestic violence court/docket;
- Compare and contrast a domestic violence docket and a domestic violence court;
- Understand the role of tribal custom and tradition in developing core values and the court/docket structure;
- Identify the Multi- Disciplinary Lens – holistic approach to victim safety and batterer accountability;
- Understand the development and benefits of utilizing protocols and policies; and
- Understand the Eight Step Model to develop protocols and policies for tribal domestic violence courts/dockets.



Domestic Violence in Dangerous for AI/AN Victims

56.1% of American Indian/Alaska Native (AI/AN) women have experienced sexual violence; 66.4 percent have experienced psychological aggression by an intimate partner; and 55.5 % have experienced physical violence by an intimate partner. *¹

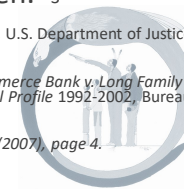
AI/AN women suffer domestic violence and physical assaults at rates higher than any other ethnicity. *²

According to the US Department of Justice, in at least 86 per cent of reported cases of rape or sexual assault against American Indian and Alaska Native women, survivors report that the perpetrators are non-Native men. *³

*¹ - *National Institute of Justice Research Report: Violence Against American Indian and Alaska Native Women and Men*. U.S. Department of Justice (2016)

*² - *Brief for National Network to End Domestic Violence et al. as Amici Curiae Supporting Respondents at 2, Plains Commerce Bank v. Long Family Land and Cattle Co.*, 128 S. Ct. 2709 (2008) (No. 07-411); 2 Steven W Perry, *American Indians and Crime: A BJS Statistical Profile 1992-2002*, Bureau of Justice Statistics, US Department of Justice, Office of Justice Programs, December 2004.

*³ - *Maze of Injustice, The Failure to Protect Indigenous Women from Sexual Assault in the USA*, Amnesty International (2007), page 4.



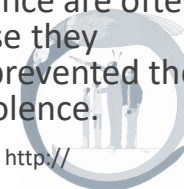
Domestic Violence is Dangerous for AI/AN Children

National studies show that 49 to 70% of men who batter their companion also abuse their children. *

Children who have been exposed to intimate partner violence in their families also are at high risk for severe and potentially lifelong problems with physical health, mental health, school and peer relationships, and disruptive behavior.

Children who witness or live with intimate partner violence are often burdened by a sense of loss or by profound guilt because they believe that they should have somehow intervened or prevented the violence—or, tragically, that they actually caused the violence.

*(Bureau of Justice Statistics, *American Indians and Crime, 1992–2002*, vi, available at: <http://www.bjs.gov/content/pub/pdf/aic02.pdf>, page 8.)

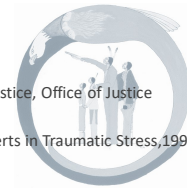


Domestic Violence is Dangerous for AI/AN Children

- Biological parents and parental figures perpetrate 32 to 39.7 percent of all sexual assaults against children. The vast majority of these sex offenders are fathers or father figures. *1
- Children who witness domestic violence in the home are 15 times more likely to be abused as compared to the national average. *2
- Various forms of ancillary crimes may be present in a domestic violence case such as physical assaults, sexual assaults, destruction of property, stalking, breaking and entering, child abuse, child neglect and child sexual assault.

*1 - Greenfield, L., Child Victimizers: Violent Offenders and their Victims, Jointly published by the U. S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics and Office of Juvenile Justice and Delinquency Prevention, p.10, 1996.

*2 - Volpe, J.S., 'Effects of Domestic Violence on Children and Adolescents: An Overview', The American Academy of Experts in Traumatic Stress, 1996.



Why Are Domestic Violence Rates So High For AI/AN Victims?

PRECOLONIZATION

Strong traditional customs, values and traditions.

Tribal nations had system in place to address any acts of violence.

Such acts of violence addressed swiftly and appropriately.

Violence of any type, especially against women and children, was intolerable.

Mother-child bond was sacred and was protected.

Violence, as with any trauma experienced by tribal nation, was addressed collectively and in a coordinated community manner.

CONTEMPORARY ISSUES AND HISTORIC TRAUMA

Diminishment in the status of women

Destruction and disease

Boarding Schools

Learned violence

Limited jurisdiction



Specialized Tribal DV Courts/ Tribal DV Dockets



UTILIZING THE POWER OF TRIBAL SOVEREIGNTY TO EFFECTIVELY
ADDRESS THE SAFETY OF THE VICTIM AND HIS/HER CHILDREN AND
HOLD PERPETRATORS ACCOUNTABLE FOR DV BEHAVIORS

Trauma Informed Response

- Current trauma of domestic violence trigger past abuse and historic trauma.
- Addressing victim's whole person needs with emphasis on safety needs – Mental/Intellectual; Emotional; Physical; Spiritual.
- Victim empowerment is critical.
- Requires service providers understand trauma of domestic violence and avoid re-traumatizing victim.
- Requires education for all segments of the community.



Examples of Civil and Criminal Legal Relief A Victim May Need in Tribal Court

Civil Relief:

- protection order
- employment law
- housing law
- debtor creditor
- family law
- child welfare



Criminal (when perpetrator is charged with a domestic violence crime):

- criminal protection order
- asserting victims' rights
- immunity provisions



Domestic Violence Courts

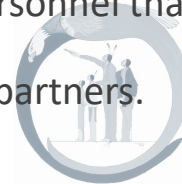
STRENGTHENS TRIBAL SOVEREIGN POWERS

May be civil and/or criminal.

Allows for incorporation of unique tribal customs/traditions regarding healthy families and communities in all phases of a case.

Allows specialized domestic violence tribal court to implement policies, protocols and trainings for personnel that will come into contact with the family.

Builds strong partner relationships among service partners.



Domestic Violence Courts

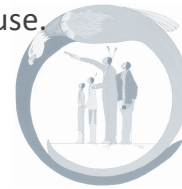
PUTS FOCUS ON VICTIM SAFETY BY:

- Protocols to keep victims informed.
- Protocols to link victim with advocate for safety planning.
- May empower tribal victim service providers.



PUTS FOCUS ON COURT SAFETY:

- Protocols to create safe places within and outside the courthouse.
- Providing specially trained court/law enforcement personnel.
- Safety-driven scheduling of dockets.



Domestic Violence Courts

HOLDING BATTERERS ACCOUNTABLE

- Specially trained court/law enforcement personnel.
- Builds strong relationships with multiple service providers.
- May allow cross-pollination of batterer records to promote more comprehensive monitoring.
- Allows specialized court to determine culturally appropriate batterer programs.
- Focus post-adjudication on batterer accountability and change.
- Built in review hearings.



Domestic Violence Courts

PROMOTING COORDINATED TRIBAL COMMUNITY RESPONSE TO DOMESTIC VIOLENCE

May create policy uniformity among various agencies working with the victim.

May provide opportunity for regular meetings among service providers.

Creates environment in which system change can be achieved.



A SPECIALIZED DOMESTIC VIOLENCE DOCKET



Domestic Violence Dockets

- May be civil and/or criminal.
- Provides some measure of continuity for victims and families.
- Specialized docket days that focus on victim safety and batterer accountability.
- May provide specialized judges and court personnel.
- May provide specialized law enforcement.
- May enhance relationships with service providers.



Costs

- Funding for a coordinator position.
- Multidisciplinary team just needs to be organized, no additional costs.
- Training is often free, look to OVW for Training and Technical Assistance providers.



Backdrop for analysis of tribal civil/criminal jurisdiction

- Inherent Sovereign Authority: Indian tribes - as sovereign nations - historically have inherent jurisdictional power over everything occurring within their Indian country.
- Tribal courts are courts of general jurisdiction which continue to have broad jurisdiction.
- Analysis of tribal jurisdiction should begin with this sovereign authority and determine whether there has been any way in which this broad sovereign authority had been reduced BY CONGRESS.



History of Domestic Violence Courts

Domestic violence movement over the past three decades included: mandatory arrests, protection order courts, victim advocates establishing shelters, victim services and community programs for victims.

Since the 1990's domestic violence courts have grown along with other problem solving courts (drug courts, mental health courts, community courts). **Domestic violence courts do not reflect all of the same principles as other problem solving courts.**

Domestic violence courts have a responsibility to the victim. Further, domestic violence often includes violent crimes.

Domestic violence courts across the United States differ but do share common core values.



Core Values Guiding a Domestic Violence Court/Docket

VICTIM SAFETY/VICTIM DRIVEN:

Early screening/identification of domestic violence

Unlimited access to victim advocates (cornerstone of effectively addressing domestic violence)

Early supply of social services for victim and children

Keep victim informed

Schedule cases punctually

Provide safe places for victim in the courthouse



Core Values Guiding a Domestic Violence Court/Docket

OFFENDER ACCOUNTABILITY:

One permanent judge

Fixed prosecutorial team

Fixed law enforcement team

Continuous monitoring of the batterer

Be creative in monitoring techniques

Create separate criminal dockets if overflow



Core Values Guiding a Domestic Violence Court/Docket

MULTI-DISCIPLINARY SYSTEMIC RESPONSE TO DOMESTIC VIOLENCE:

JUDICIAL LEADERSHIP: Single presiding judge to hear civil (protection orders, divorce, custody) and related criminal cases for one family

STRONG, COLLABORATIVE PARTNERSHIPS: advocates, prosecution, law enforcement, social services, child protection, schools, healthcare workers.... scheduling regular meetings with partners.

EDUCATION AND TRAINING FOR ALL:

Regular and on-going trainings for all domestic violence court partners and tribal community



Role of Tribal Custom and Tradition in Developing Core Values

Core value of domestic violence court /docket is to provide victims of domestic violence with safety and protection.

Violence against family members is not in keeping with tribal customs and traditions.

Victims of domestic violence deserve tribally based, fair, compassionate and prompt responses.

Domestic violence threatens the political integrity of the tribe as it is any tribal nations duty to protect the health and well being of its citizens.

Tribal nations have the power to utilize criminal and civil justice systems in setting standards of behavior within the family that are consistent with tribal custom and tradition and the tribe may utilize tribal authority to impose sanctions upon offenders for behaviors that violate custom and traditions.



Role of Tribal Custom and Tradition in Developing Court/Docket Structure

The safety and well-being of American Indian/Alaska Native victims of domestic violence and their children is critical to the strength and stability of tribes.

Tribal victims often prefer to seek help from and utilize tribal systems over state/federal systems due to mistrust issues fueled by years of oppression and historical trauma.

To protect the mother-child bond.



Effectively Addressing Domestic Violence through the Multi- Disciplinary Approach

A Multi-disciplinary approach underscores in the importance of coordination, collaboration and interactions between all systems addressing the victim/children's needs.

Provides for a very carefully tailored sharing of information among systemic silos.

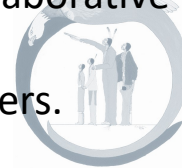
Addresses confidentiality and privileged communications issues in a safe manner.

Promotes the establishment of a collaborative network of courts, civil and criminal justice agencies, local victim service organizations, and social service programs working together to create policies and procedures to increase the safety of victims of domestic violence.



Protocols and Policies-A Living Document That:

- Provides a working definition of domestic violence.
- Provides a roadmap to the delivery of trauma-informed, victim-driven services.
 - Trauma-informed
 - Victim-driven
- Formalizes rules and responsibilities of the collaborative partners – both present and future.
- Helps ensure accountability of court and partners.



The Core Team:

- Judges
- Court Personnel
- Tribal Victim Advocate
- Tribal Prosecutors
- Law Enforcement/Probation
- Defense Attorneys
- Other Victim Service Providers



The Core Team Should Collaboratively Develop and Identify:

- Mission Statement
- Core Values
- Confidentiality/Client Privacy Safeguards To Protect Victim Information

These documents should be in place prior to beginning to write protocols.



Exercise: Developing the Team Vision Statement

- Please refer to handout.

STOP
Violence Against Women



Eight Step Model for Developing Protocol

- The Eight-Step Model, called the Protocol Development Cycle, is designed to create community-specific protocol to improve response to crime and its victims.
- This model utilizes a cyclical approach where once the eight steps are completed, they are repeated and adjusted as needed.

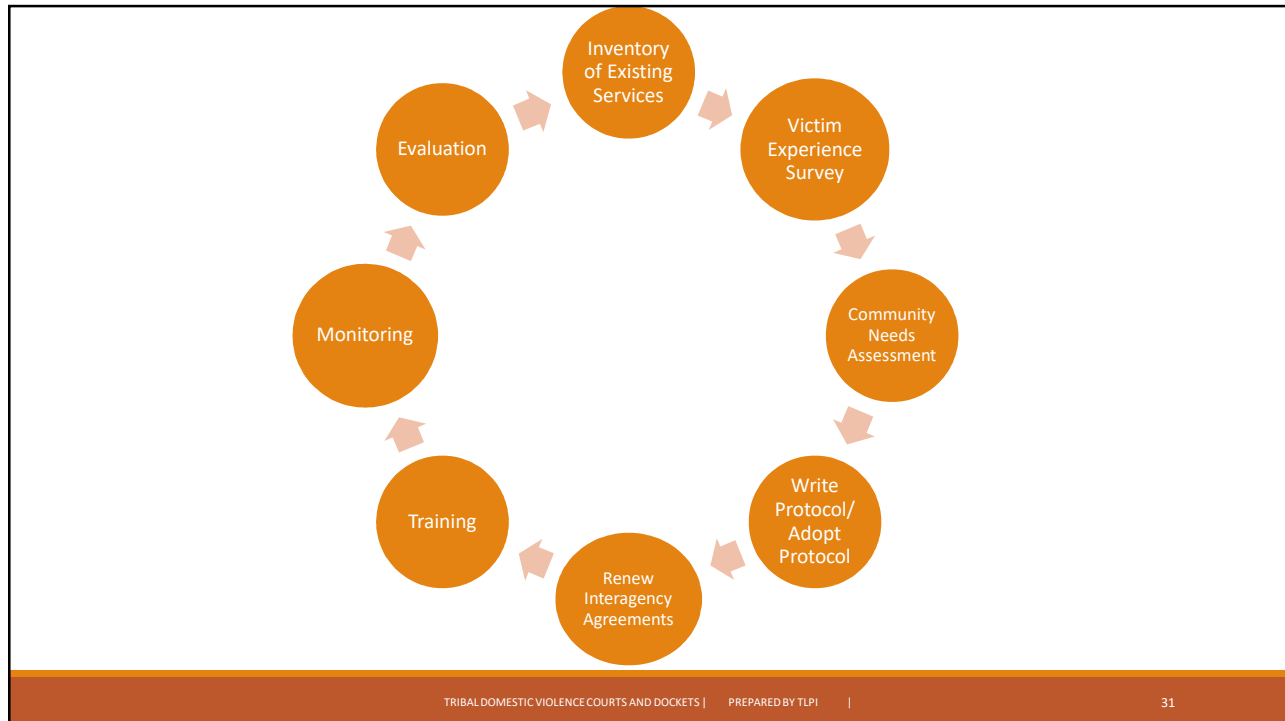


Eight Step Model for Developing Protocols

This process involves the following eight steps:

- Inventory of Existing Services
- Victim Experience Survey
- Community Needs Assessment
- Writing Protocol/Adopt Protocol
- Enter/Renew Interagency Agreements
- Training
- Monitoring
- Evaluation

Repeat



Repeat

In addition to setting forth regular, periodic meetings between the collaborative partners, the protocols should be reviewed by project partners at designated times and modified as needed.

This step is critical and cannot be overstated. This step ensures that the protocols will reflect and address the ever-changing needs of the community and ensure best practices when addressing the complex needs and safety issues of domestic violence victims.

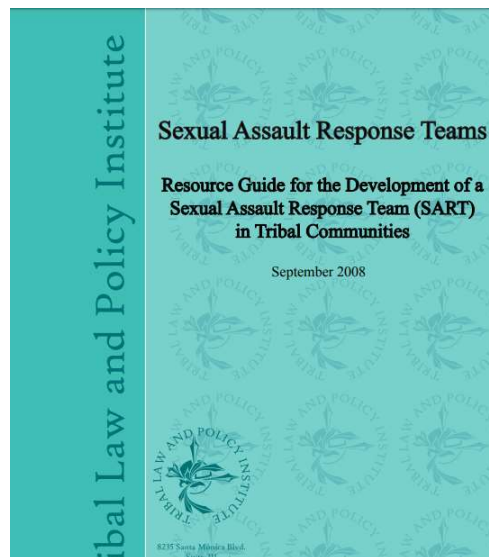


Additional Resources



Sexual Assault Response Teams

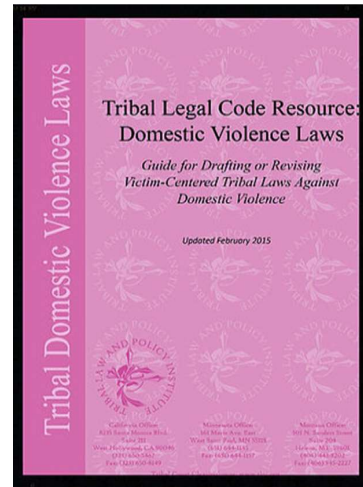
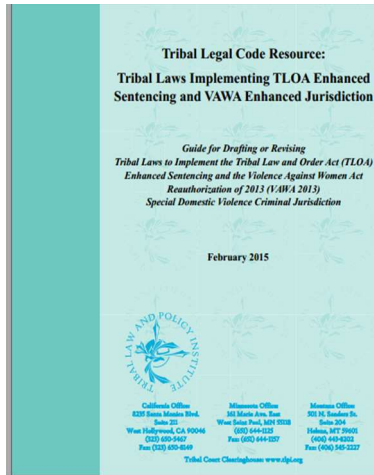
Can be downloaded for free at:
http://www.tribal-law-and-policy-institute.org/download/SART_Manual_09_08.pdf



Tribal Legal Code Resources

Tribal Laws Implementing TLOA Enhanced Sentencing and VAWA Enhanced Jurisdiction can be downloaded for free at: http://docs.wixstatic.com/ugd/8305c9_49314c224a4a4dee813a029275cef79f.pdf

Guide for Drafting or Revising Victim-Centered Tribal Laws Against Domestic Violence can be downloaded for free at: <http://www.tribal-institute.org/download/Amended%2520Domestic%20Violence%20Code%20Resource%202015.pdf>



www.tribalprotectionorder.org



VAWA Special Domestic Violence Criminal Jurisdiction Resources

TLPI Publications: www.TLPI.org or www.Home.TLPI.org

NCAI Tribal VAWA Resources: <http://www.ncai.org/tribal-vaawa>

TRIBAL DOMESTIC VIOLENCE COURTS AND DOCKETS | PREPARED BY TLPI

TLPI Publications & Web Resources

Tribal Court Clearinghouse: www.TLPI.org or www.Home.TLPI.org

Tribal Protection Order Resources: www.tribalprotectionorder.org

Sex Trafficking Resources: www.tribaltrafficking.org



Questions?
