

JUDGES GUIDE TO

**TRIBAL COMMUNITIES AND
DOMESTIC VIOLENCE**

[2017]



**JUDICIAL COUNCIL
OF CALIFORNIA**

OPERATIONS AND PROGRAMS DIVISION
CENTER FOR FAMILIES, CHILDREN & THE COURTS

This project is supported by Grant Award Number CW17161535 awarded by the California Emergency Management Agency (CalEMA) administering for the STOP Grant Fund Program. The opinions, findings, and conclusions in this publication are those of the author and do not necessarily represent the views of CalEMA or the U.S. Department of Justice, Office of Violence Against Women. CalEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use these materials and authorize others to do so.

ABOUT THIS PROJECT

This project is supported by Grant Award Number CW17161535 awarded by the California Emergency Management Agency (CalEMA) administering for the STOP Grant Fund Program. The opinions, findings, and conclusions in this publication are those of the author and do not necessarily represent the views of CalEMA or the U.S. Department of Justice, Office of Violence Against Women. CalEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use these materials and authorize others to do so.

JUDICIAL COUNCIL OF CALIFORNIA, CENTER FOR FAMILIES CHILDREN AND THE COURTS

Ms. Charlene Depner, Director
Center for Families, Children & the Courts
Ms. Ann Gilmour
Attorney
Ms. Vida Castaneda
Senior Court Services
Analyst
Ms.Carolynn Bernabe
Administrative Coordinator

CALIFORNIA TRIBAL COURT/STATE COURT FORUM EDUCATION SUBCOMMITTEE

Hon. Abby Abinanti
Chief Judge of the Yurok Tribal Court
Hon. Leonard P. Edwards (Ret.)
Center for Families, Children & the Courts
Administrative Office of the Courts
Hon. Deborah A. Ryan
Judge of the Superior Court of California, County of Santa
Clara
Hon. Deborah L. Sanchez
Judge of the Superior Court of California, County of Los
Angeles
Hon. Christine Williams,
Chief Judge of the Hopland Band of Pomo Indians Tribal Court
Hon. Claudette White
Chief Judge of the Quechan Tribal Court

For additional information about this publication,
please contact:
Ann Gilmour, Attorney 415-865-4207, e-mail
ann.gilmour@jud.ca.gov,
fax 415-865-7217

© 2017 by Judicial Council of California. All rights reserved.
Published September 2017

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

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

Contents **Page**

Part I. Introduction 2
Part II. Barriers Facing Native Victims of Domestic Violence..... 3
Part III. Myths Dispelled..... 6
Part IV. The ABC’s of Federal Indian Law Relating to Domestic Violence..... 9
Part V. Full Faith and Credit 14
Part VI. Law Enforcement in Indian Country 15

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

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

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

Appendix D 28
Resource Links

Tribal Communities and Domestic Violence

I. Introduction

A. The Purpose and Scope of this Benchguide

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

B. Nature of Domestic Violence in Tribal Communities

American Indian and Alaska Native communities in California have been severely affected by domestic violence, sexual abuse, and stalking. Such violence, much of it directed against women, occurs in California as well as elsewhere in the United States. Especially high rates of victimization have been found among American Indian and Alaskan Native peoples on and off the reservation. The prevalence rates for women and men are summarized below.

Violence Against American Indian and Alaska Native Women¹

More than 4 in 5 (83%) have experienced violence in their lifetime. This includes:

- More than half (56.1%) have experienced sexual violence;
- More than 1 in 3 (35.0 percent) have experienced sexual violence with penetration;
- More than half (55.5%) have experienced physical violence by an intimate partner;
- Almost half (48.8%) have experienced stalking; and
- Two thirds (66.4%) have experienced psychological aggression by an intimate partner.

Violence Against American Indian and Alaska Native Men²

More than 4 in 5 (81.6 %) have experienced violence in their lifetime. This includes:

- More than 1 in 4 (27.5%) have experienced sexual violence;

¹ See André B. Rosay, Ph.D., U.S. Department of Justice, NCJ 249736, National Institute of Justice Research Report Violence Against American Indian and Alaska Native Women and Men: 2010 Findings From the National Intimate Partner and Sexual Violence Survey (2016), pp 2, 18-19.

² Id.

- Nearly half (43.2%) have experienced physical violence by an intimate partner;
- Almost 1 in 5 (18.6%) have experienced stalking; and
- Almost three quarters (73.0%) have experienced psychological aggression by an intimate partner.

Sexual Violence by an Interracial Perpetrator

Among the American Indian and Alaska Native women who have experienced sexual violence in their lifetime, almost all (96% for women and 89% for men) have experienced sexual violence by an interracial perpetrator. This disparity is not typical of any other ethnic group since perpetrators are usually found to be the same race as the victim.³

Rape

“Lifetime estimates showed that more than 1 in 3 (34.1 percent) of American Indian and Alaska Native women had experienced rape (Tjaden and Thoennes, 1998, 2000b, 2006), and 15.9 percent had experienced rape by an intimate partner (Tjaden and Thoennes, 2000a). American Indian and Alaska Native women were almost two times as likely to have experienced rape as non-Hispanic White women (34.1% versus 17.9%; Tjaden and Thoennes, 2006).”⁴

Stalking

Among American Indian and Alaska Native women, nearly 1 in 2 (48%) have experienced stalking in their lifetime and just over 1 in 10 (11.6 %) have experienced it in the past year. Among American Indian and Alaska Native men, nearly 1 in 5 (18.6%) have experienced stalking in their lifetime and almost 1 in 20 (3.8%) have experienced it in the past year. Among American Indian and Alaska Native victims, almost all (89% of women and 91% of men) have experienced stalking by an interracial perpetrator.⁵ These statistics underscore the public safety crisis in Indian Country and the severity of the problem facing American Indian and Alaska Native people, the courts, and its justice partners. The violence and victimization rates in California, home to 14 percent of all Native Americans living in the United States (more than any other state),⁶ mirror the rest of the country.

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

C. Unique Obstacles Faced by Native Victims

In addition to the barriers faced by domestic violence victims in general, native

³ Id. @ pp 2,18.

⁴ Id. @ p. 11.

⁵ Id. @ p. 29.

⁶ Census (2010), See Census Brief at p.6, <https://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf>.

victims encounter unique obstacles relating to: (1) reporting domestic violence; (2) the availability and appropriateness of services; (3) access to the court; and (4) enforcement of protective orders.

II. Barriers Facing Native Victims of Domestic Violence

A. Introduction

The Violence Against Women Act encourages jurisdictions to bring together stakeholders from diverse backgrounds to share information and to use their distinct roles to improve community responses to violence against women. These players include, but are not limited to: judges, victim advocates, police officers, prosecutors, probation and corrections officials, and health care professionals. The judge can play an instrumental role. In Indian Country, there are a number of challenges to ensuring victim safety and offender accountability. These challenges include: geographic isolation of much of Indian Country in California, jurisdictional confusion about law enforcement's jurisdiction and judicial authority in Indian Country, historical oppression of Native Americans, which leads to distrust and lack of cultural understanding and culturally appropriate services.⁷ Much of the discussion that follows relies upon the statewide needs assessment conducted by the Judicial Council as part of the Native American Communities Justice Project.

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

B. Why Native Victims of Domestic Violence May Not Report

A native victim may face fears and challenges in reporting incidents of domestic violence. Lack of reporting is due to a number of interrelated factors, including shame and embarrassment relating to the violent conduct, fear of repercussions from family members and the community, and mistrust of law enforcement, social services, and the court. These barriers are not unique to Native American communities,⁸ although in combination with other barriers such as geographical distance and prejudicial attitudes, they take on increased salience. For example, while fear of being reported to Child Protective Services for contacting the authorities about family violence and facing

⁷ More information on these barriers and how they impact victim safety and offender accountability can be found in the reports from the Native American Communities Justice Project: <http://www.courts.ca.gov/8117.htm>.

⁸ See, e.g., U.S. Department of Agriculture: Safety, Health and Employee Welfare Division, "Domestic Violence Awareness Handbook," www.dm.usda.gov/shmd/aware.htm#HELP (accessed May 5, 2010); C. J. Newton, MA, "Domestic Violence: An Overview," www.aets.org/article145.htm (accessed May 5, 2010).

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

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

C. The Lack of Available and Appropriate Services

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

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

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

Native victims report that their histories, cultures, values, and experiences may not be well understood by judges and court personnel. Historic oppression of and discrimination against Native Americans continue to resonate with the Native American population and affect their interactions with state courts and local agencies. They report that, in general, judges, attorneys, and state and local agency staff have little knowledge of and do not understand the historical experiences of Native American populations and how these experiences continue to affect their lives. Specifically, they identified that these same individuals typically lack knowledge about key cultural and legal concepts, such as sovereignty, Public Law 280 (PL 280),⁹ and historical facts.

Some report the perception that a lack of information may have caused many tribal governments in California to be denied funding to develop tribal justice systems and services. The lack of trust and of basic knowledge about state court procedures and legal services on the part of Native Americans, and the corresponding lack of knowledge and understanding on the part of state courts and non-native agencies, were the two primary reasons why Native American victims of family violence may not seek assistance from the courts, other justice agencies, and service providers.

Victims of domestic violence who may be reluctant to go to court for protection?

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

Native victims report that sometimes law enforcement officers will not enforce a tribal protective order unless it can be verified in the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS). Currently most tribal courts and law enforcement agencies in California do not have access to these systems, California clarified in no uncertain terms that federal and state law require that tribal protection orders be accorded full faith and credit through the issuance of a California Attorney General Bulletin (DOJ Bulletin) and production of an educational video. The DOJ Bulletin and video emphasize that these orders do not need to be registered with the state court or locatable in law enforcement data bases. If the orders are valid on their face they must be enforced. These educational tools were the result of the

⁹ Public Law 83-280, August 15, 1953, codified at 18 U.S.C. 1162, 28 U.S.C. § 1360, and 25 U.S.C. §§ 1321–1326.

collaboration among the Judicial Council’s Tribal Court-State Court Forum, the California State Sheriff’s Association, the California Attorney General and other

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

1. *Meet with local law enforcement to ask whether they encounter and enforce tribal protective orders.*
2. *Share the DOJ Bulletin or show the educational video at a local domestic violence coordinating council or other local systems meeting.*

<https://www.walkingoncommonground.org/files/Information%20Bulletin.pdf> and
<http://www.courts.ca.gov/14851.htm>

justice partners.

III. Myths Dispelled

A. Background

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

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

State criminal laws do apply on tribal lands; however, enforcement presents challenges for many reasons.¹⁰ PL280, specifically 18 U.S.C. Section 1162(a) grants criminal jurisdiction in Indian country concurrent with tribes to six mandatory states, including California.¹¹

2. **Myth: Tribal courts’ criminal jurisdiction is limited to Indians who are members of that tribe.**

Tribes have a limited ability to enforce their criminal laws. Tribes generally lack criminal jurisdiction over non-Indians,¹² while they retain

¹⁰ See, e.g., *Penobscot Nation v. Stilphen* (Me. 1983) 461 A.2d 478, 488; *State v. Schmuck* (Wash. 1993) 121 Wash.2d 373, 393.

¹¹ P.L. 280 originally granted jurisdiction to six states that include California, Minnesota (except Red Lake Reservation), Nebraska, Oregon (except Warm Springs Reservation), Wisconsin, and then Alaska upon statehood. These states are referred to as the mandatory states because neither the states nor tribes had a choice in being subject to the law. An additional 10 states subsequently chose to assume at least some degree of jurisdiction under the law. These “optional states” include: Arizona, Idaho, Iowa, Florida, Montana, Nevada, North Dakota, South Dakota, Utah, and Washington.

¹² *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 210 (1978).

jurisdiction over “all Indians,”¹³ including their own citizens¹⁴ as well as “nonmember Indians,”¹⁵ but neither Congress nor the federal courts have defined who is included in this category.

In the absence of federal statutes limiting it, tribal criminal jurisdiction over Indians in Indian country is complete, inherent, and exclusive. As described below, Congress restored tribal jurisdiction over non-Indians who commit acts of domestic violence or dating violence, or criminal violations of protection orders in Indian country.¹⁶

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

Recognizing that native women suffer the highest rates of domestic violence, stalking, and sexual assault of any population in the United States,¹⁷ and that the majority of perpetrators of these crimes are non-Indian,¹⁸ Congress enacted the Violence Against Women (VAWA) Reauthorization Act of 2013.¹⁹

Under VAWA, the federal government authorized criminal tribal court jurisdiction over non-native perpetrators in these cases. VAWA now provides tribes with the authority to hold domestic violence perpetrators accountable for their crimes against native women—regardless of the perpetrator’s race. Under these new tribal-jurisdiction provisions:

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

¹³ 25 U.S.C. Section 1301 (2) (2012).

¹⁴ Courts have long held that tribes retain inherent criminal jurisdiction over members of their tribes who commit crimes in their territory. See generally *Talton v. Mayes*, 163 U.S. 376 (1896); *United States v. Wheeler*, 254 U.S. 281 (1978).

¹⁵ *United States v. Lara*, 541 U.S. 193, 198 (2004), upholding Congress’s power to restore tribal criminal jurisdiction over nonmember Indians.

¹⁶ Violence Against Women Act (VAWA) Reauthorization 201, 25 U.S.C. § 1304(b)(4)(B).

¹⁷ See André B. Rosay, Ph.D., U.S. Department of Justice, NCJ 249736 (2016), *supra note 1*.

¹⁸ *Id.* .

¹⁹ Title IX of S.47, section 904 (2013)

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

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

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

Federal courts have jurisdiction to review such tribal jurisdiction determinations after exhaustion of tribal remedies. VAWA affirms the right of habeas corpus to challenge detention by an Indian tribe, and goes even further by requiring a federal court to grant a stay preventing further detention by the tribe if there is a substantial likelihood that the habeas petition will be granted. The legislation does not raise the maximum sentence of one year or fine of \$5,000 that can be imposed by a tribal court, unless the tribal government has qualified to issue enhanced sentencing under the Tribal Law and Order Act, which allows for incarceration for up to nine years for multiple offenses and/or fines for up to \$15,000 for one offense.²⁰

On February 20, 2014, three tribes, the Pascua Yaqui, Confederated Tribes of Umatilla and the Tulalip Tribes were approved by the United States Attorney General to participate in a Department of Justice VAWA Pilot Project to exercise special tribal prosecution provisions. A few months later, the Assiniboine and Sioux Tribes of the Fort Peck Reservation and the Sisseton Wahpeton Oyate of the Lake

²⁰ 25 U.S. C. 1301(a)7D.

Traverse Reservation were approved to participate in the pilot project. As of March 7, 2015, VAWA 2013's Special Domestic Violence Criminal Jurisdiction provisions became effective allowing any tribe to exercise this authority without having to seek federal approval, as long as, they are able to meet the statutory requirements of the law.

4. Myth: Tribal courts do not have civil jurisdiction over non-native perpetrators of domestic violence.

Tribal courts have inherent civil jurisdiction over domestic violence cases assuming there is personal and subject matter jurisdiction, regardless of the political status (Indian or non-Indian) of the perpetrator. [See *Montana v. U.S.* (1981) 450 U.S.544, 565 (Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands); 18 U.S.C § 2265(e)(2003) (tribal court has full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe); *Iowa Mutual Ins. Co. v. LaPlante* (1987) 480 U.S. 9, 18; *Duncan Energy v. Three Affiliated Tribes* (8th Cir.1994) 27 F.3d 1294, 1299 (civil jurisdiction over the activities of non- Indians on reservations lands presumptively lies in tribal courts, unless affirmatively limited by a specific treaty provision or federal statute).]

5. Myth: Tribal courts and state courts do not have authority to consider each other's orders of conviction in sentencing habitual offenders.

VAWA establishes a separate criminal charge for habitual offenders with at least two other domestic violence convictions who commit a subsequent act of domestic violence in Indian country.²¹ The constitutionality of this provision has been challenged several times, specifically over the federal government's authority to try Native American defendants based on prior tribal court convictions in which the defendant was not represented by counsel, or "uncounseled convictions."²² The United States Supreme Court held that the use of uncounseled tribal court domestic violence convictions as predicate offenses under VAWA does not violate the Constitution because the tribal court convictions occurred in proceedings that complied with the Indian Civil Rights Act and were therefore valid.²³

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

Public Law 280 left intact the inherent civil and criminal jurisdiction of Indian

²¹ VAWA 2005 Section 909, 119 Stat. at 3084. This section, which amends Chapter 7 of Title 18 of the United States Code by adding Section 117, entitled "Domestic assault by an habitual offender.

²² The Ninth and Tenth Circuits reached inconsistent results. Compare *United States v Shavanaux*, 647 F.3d 993, 997 (10th Cir. 2011) and *Kirkaldie* 21 F.Supp. 3d 1100,1102 (D. Mont. 2014)

²³ *United States v. Bryant*, 136 S.Ct. 1954, 1966 (2016).

nations, providing for concurrent state and tribal jurisdiction in these states. Since the passage of PL 280, Congress has strongly favored tribal self- government and tribal court development. [*Bryan v. Itasca County, Minnesota* (1976) 426 U.S. 373, 388 (nothing in the legislative history remotely suggests that Congress meant the act's extension of civil jurisdiction to the states should result in the undermining or destruction of tribal government, rather, it contemplates the continuing vitality of tribal government).]

7. Myth: PL 280 has improved public safety within Indian country.

Since passage of PL 280, both tribes and states have had numerous complaints about the practical effect of the law. “Tribal concerns center around a belief that the law infringes on tribal sovereignty, that state law enforcement fail to respond or fail to respond in a timely manner to incidents on tribal land requiring the assistance of law enforcement, that federal officials have failed to support concurrent tribal jurisdictional and law enforcement authority, and that a lack of effective law enforcement on tribal land has resulted from the enactment of PL 280. In addition, concerns exist surrounding the perception that state law enforcement officers behave in a discriminatory and culturally insensitive manner when they do respond to incidents on tribal land, and that confusion exists as to which government is responsible for providing law enforcement services.”²⁴

In California, a recent case illustrates the type of confusion and negative impact PL 280 can have on public safety, law enforcement, prosecutors, courts and tribal/state/county relationships. In *Bishop Paiute Tribe v. Inyo County*, No. 15-16604 (2017), a call from a tribal member reporting that his non-Indian ex-wife was in violation of protection orders resulted in a dispute between the Bishop Paiute Tribe (Tribe) and the defendants, County Prosecutor and Sheriff. The Tribe contends that it was exercising its inherent sovereign authority to restrain, detain, and deliver to local authorities a non-Indian on tribal lands who was in violation of both tribal and state protection orders. Defendants agree that the ex-wife was in violation of these orders, however, they disagree with the Tribe’s definition of its legal authority. Defendants stand by the state’s pending prosecution of the officer and the voluntary Tribal cease and desist order.²⁵ The district court dismissed the case finding that it lacked subject matter jurisdiction over the Tribe’s claims and that these claims were moot because of the voluntary cease and desist order. Appellate Court reversed and remanded the case to the district court to address the federal question of law: a tribe’s authority to investigate alleged violations of tribal, state, and federal law, to detain and transport a non-Indian violator on the reservation to the proper authorities. The court found the Tribe’s claims ripe and not moot, reasoning that “[w]ithholding the court’s consideration and resolution of these disputes creates multiple hardships for the Tribe, including ongoing legal costs,

²⁴ Duane Champagne and Carole Goldberg, *Captured Justice: Native Nations and Public Law 280* (Durham, NC: Carolina Academic Press, 2012), 3-4

²⁵ *Bishop Paiute Tribe v. Inyo County*, No. 15-16604 (2017) [reversed and remanded on procedural grounds, holding that the district court had subject matter jurisdiction and that the dispute between the parties is ripe and not moot.]

intrusions on the Tribe's ability to keep the peace and security of the reservation, misunderstanding and confusion surrounding the ability of the Tribe and Tribal PD to enforce tribal laws and prevent lawlessness on the reservation, and potentially an unlawful limitation on the Tribe's inherent sovereign powers."²⁶

8. Myth: Tribal courts do not have civil jurisdiction over non-Indians on non-Indian land.

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

9. Myth: State courts have jurisdiction to evict tribal members from tribal housing on Indian land.

While no-contact, stay-away and related terms of a protection order are fully enforceable on tribal lands, California courts do not have jurisdiction to make orders authorizing the alienation, encumbrance, or taxation of any real or personal property belonging to an Indian or tribe that is held in trust by the Federal Government (called "trust property") or is subject to a restriction against alienation imposed by the Federal Government (called "restricted property").²⁷

²⁶ Id at 17.

²⁷ See 28 U.S.C. § 1360(b). Generally, the state has no authority to regulate the use of tribal lands and in particular no authority to order an individual out of tribal housing. "Where a dispute involves trust or restricted property, the state may not adjudicate the dispute nor may its laws apply." *In re Humboldt Fir, Inc.*, 426 F.Supp. 292, 296 (N.D.Cal.1977), aff'd 625 F.2d 330 (9th Cir.1980) (see also *All Mission Indian Housing Authority v. Silvas* (C.D. Cal. 1987), 680 F. Supp. 330; and *Owens Valley Indian Housing Authority v. Turner* (9th Cir. 1999) 185 F. 3d 1029, 1032).

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

A. Introduction

Federally recognized tribes possess the inherent powers of a sovereign government, except as limited by Congress, treaties, statutes, and common law. These powers include the right of tribes to form their own governments; to make and enforce laws, both civil and criminal; to establish justice systems, including tribal police and tribal courts; to tax; to establish and determine membership (i.e., tribal citizenship); to license and regulate activities within their jurisdiction; to zone; and to exclude persons from tribal lands.²⁸

Both California and federal law require that courts and peace officers enforce tribal court protection orders. Cal. Fam. Code, §§ 6400-6409 [Uniform Interstate Enforcement of Domestic Violence Protective Orders Act] and 18 U.S.C. § 2265 [Violence Against Women Act; federal law requiring “full faith and credit” be given to tribal court protection orders]. Key to effective recognition and enforcement of tribal protection orders are (1) advancing the shared interest that these laws allow the protected person to move throughout the United States and its territories without needing to obtain new court orders; (2) establishing relationships between local state courts and tribal courts, as well as between California law enforcement officers and their tribal counterparts and governments; and (3) engaging cross-jurisdictionally to maximize services that are culturally appropriate.

B. General Civil Jurisdiction

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

The term “Indian Country,” as used in this chapter, means (a) all land within the limits of any Indian reservation within the jurisdiction of the United States government notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and

²⁸ See, e.g., 55 Interior Dec. 14, 48-50 (1934) (powers of Indian Tribes). See *Merrion v. Jicarilla Apache Tribe* (1982), 455 U.S. 130, 159; *Quechan Tribe v. Rowe* (9th Cir., 1976) 531 F.2d 408.

(c) all Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

The United States Supreme Court has held that tribes have exclusive jurisdiction over any civil case involving an Indian defendant when the underlying claim arose in Indian Country. *Williams v. Lee* (1959) 358 U.S. 217; *Strate v. A-1 Contractors* (1997) 520 U.S. 438. This includes civil actions brought by non-Indian plaintiffs against Indian defendants.

However, it is unclear whether the exclusive civil jurisdiction of tribal courts also extends to Indian defendants who are citizens/members of other tribes.

Washington v. Confederated Tribes of the Colville Indian Reservation (1980) 447 U.S. 134. Tribes will generally lack civil jurisdiction over non-Indians for conduct occurring on the reservation unless the tribe can demonstrate that (1) the non-Indian has entered into a consensual relationship with the tribe or its members through commercial dealings, contracts, leases, or other arrangements or (2) the non-Indian's conduct has a direct effect on the tribe's political integrity, economic security, or the health and welfare of the tribe. *Montana v. United States* 450 U.S. 544 (1981). Civil jurisdiction in Indian country is a complex issue; for more information see the Judicial Council's online resource on Federal Indian Law, <http://www.courts.ca.gov/27002.htm>.

C. Civil Jurisdiction in Domestic Violence Cases

The Violence Against Women Act (VAWA) was enacted in 1994 (and amended in 2000 and again in 2005 (signed into law Jan. 5, 2006 and reauthorized in 2013) by Congress to “decrease the incidence of violent crimes against Indian women; strengthen the capacity of Indian tribes to exercise their sovereign authority to respond to violent crimes committed against Indian women; and . . . ensure that perpetrators of violent crimes committed against Indian women are held accountable for their criminal behavior.”²⁹

Under VAWA, “a tribal court shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe.” See 18 U.S.C. § 2265(e).

While VAWA expanded the jurisdictional authority of tribal governments, PL 280 state governments share concurrent jurisdiction and are still responsible for responding to and prosecuting these crimes on Indian land.

²⁹ VAWA 2005 Section 902, 119 Stat. at 3078

D. Criminal Jurisdiction in Domestic Violence Cases

Criminal jurisdiction in Indian country is a complex issue. This section focuses on criminal jurisdiction only as it relates to domestic violence cases; for more information on criminal jurisdiction generally, see the Judicial Council's online resource on Federal Indian Law, <http://www.courts.ca.gov/27002.htm>.

Because tribal governments are sovereign nations, they have the jurisdictional authority to prosecute enrolled members of their tribe, based on violation of tribal code. While tribes have the absolute right to prosecute their own members for any crime, they are limited by federal law in the amount of jail time they may impose. Under the Indian Civil Rights Act of 1968,³⁰ the maximum sentence allowed was one-year incarceration and a \$5,000 fine.³¹ These sentencing limitations were expanded to three years and \$15,000 with the passage of the Tribal Law and Order Act of 2010 (TLOA). These limitations do not preclude consecutive sentences for separate offenses. (See *Ramos v. Pyramid Lake Tribal Ct.* (D.Nev. 1985) 621 F.Supp. 967, 970). Nor do they apply to restitution awards or other monetary orders that do not constitute punishment of an offense. (See *Ute Mountain Tribe v. Mills* (Ute Ct. App. 1981) 10 Indian L. Rep. 6046, 6047. However, under the TLOA, a tribal court exercising felony jurisdiction may impose a maximum sentence of 9 years. (Amended section 202 of the Indian Civil Rights Act, (25 U.S.C. § 1302(a)(2)(7)(D).)

Under VAWA 2013, Congress recognized and reaffirmed the inherent sovereign authority of Indian tribes to exercise criminal jurisdiction over non-Indians who violate protection orders or commit acts of domestic violence or dating violence against an Indian on tribal lands. 25. U.S.C. 1304. Known as Special Domestic Violence Criminal Jurisdiction (SDVCJ), this is an exception to the general rule established by the Supreme Court case of *Oliphant v. Suquamish Indian Tribe*, which prohibits tribes from exercising criminal jurisdiction over non-Indians.³²

E. Traditional vs. Western Justice Systems

Generally speaking, crimes are viewed by Indian communities not only as direct offenses against the identified victims, but also as crimes against the community as a whole. The traditional justice system is most similar to the restorative justice and collaborative justice models in western justice systems.

³⁰ See 25 U.S.C. §§ 1301–1303.

³¹ See 25 U.S.C. 1302.

³² See *Oliphant v. Suquamish Indian Tribe* (1978) 435 U.S. 191.

Offenders are held accountable for making the victim whole through restitution and reparations, while the community helps to make the offender whole through support and healing practices. A traditional approach would view the individual holistically, requiring a balance of physical, mental, emotional, and spiritual health.

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

F. Remedies in Tribal Court

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

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

Lack of criminal jurisdiction over non-Indians has led to tribes using a range of civil legal strategies to address safety and security for their citizens/members, residents, and visitors. Below is a description of some of the types of civil remedies used in tribal courts today.³³

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

Restitution. Tribal courts, like state courts, issue restitution orders intended to

³³ Excerpted and adapted from Southwest Center for Law and Policy, *Creative Civil Remedies Against Non-Indians* (2008), pp. 24–31.

make victims as whole as possible and to compensate them for their losses. Tribal courts can also order more traditional forms of restitution to compensate victims. Some tribal courts in California use “restorative justice” approaches, such as “wellness court”³⁴ or “elder panels.” With these approaches, tribal courts are able to draw upon customary and traditional law in adjudicating cases.

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

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

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

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

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

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

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

³⁴ For more information about tribal wellness courts, see *Tribal Healing to Wellness Courts: The Key Components*, prepared by the Tribal Law and Policy Institute for the U.S. Department of Justice (2003).

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

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

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

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

V. Full Faith and Credit

Both VAWA and California state law mandate the extension of full faith and credit

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

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

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

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

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

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

Is there a tribal court in my jurisdiction?

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

VI. Law Enforcement in Indian Country

Understanding law enforcement authority in Indian Country is important for judges because a judge's protective order is only effective if it can be enforced. Law enforcement on tribal lands has historically been, and remains, a challenging task for tribal communities. According to the National Congress of American Indians:³⁵

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

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

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

³⁵ See National Congress of American Indians testimony before Congress at p. 60 (2001)

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

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

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

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

The scope of law enforcement authority depends on the type of entity and the agreements among entities. The State Police, or CHP, has primary traffic enforcement responsibilities on all public roads in California, which includes many of the county roads that run through California reservations/rancherias. The county sheriffs are responsible for criminal investigation, arrests, and prosecution of crimes that occur in California Indian Country. They have the authority to conduct on-reservation investigations pursuant to allegations of off-reservation crimes. Tribal police do not have the same authority to

investigate offenses against tribal members that occurred off tribal lands. Tribal police do “have the same power to restrain those who disturb public order on the reservation, and if necessary, to eject them.

Where jurisdiction to try and punish an offender rests outside the tribe, tribal officers may exercise their power to detain the offender and transport him to the proper authorities.” (See *Duro v. Reina* (1990) 495 U.S. 676, 696-697.)

Tribal law enforcement in California is relatively new. A comparison of data collected for the 2002 Census of Tribal Justice Agencies³⁶ and more current information obtained from California Tribal Police Chief's Association shows a pattern of growth in tribal law enforcement across the state:

- In 2002, 20 tribes (23% of California tribes, compared to 53% nationally) reported having a tribal law enforcement agency. In 2012, this has grown to 39 tribes (about 37% of California tribes). The remaining tribes rely on some combination of state/local law enforcement.³⁷
- In 2002, 10 agencies employed sworn officers; of these, 5 had a cross-deputization agreement with either the BIA (4) or “neighboring non-tribal authorities” (1). By 2012, this had grown to 17 agencies with sworn officers.³⁸
- The number of agencies that operate through a PL 93-638 or self-governance contract (6) has been stable from 2002 to 2012.
- Six tribal agencies had arrest authority over non-Indians in 2002. This has risen to 17 agencies in 2012.

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

³⁶ Steven W. Perry, Bureau of Justice Statistics, Census of Tribal Justice Agencies in Indian Country, 2002 (NCJ 205332) (Dec. 2005).

³⁷ Id.

³⁸ Four additional tribes are in the process of establishing law enforcement agencies.

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

Tribal Law Enforcement Functions – 2002³⁹

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

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

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

If a tribe has a police department, the tribal officers may detain any persons for violations of California law and transport them to state or county law enforcement, even if these law enforcement officials are a distance from the reservation. This detention is deemed an arrest. Most tribes in California do not have the financial resources to operate a police department.⁴⁰

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

In some counties, local law enforcement agencies have entered into cross-deputization agreements⁴¹ with tribal governments allowing for mutual aid and assistance, regardless of jurisdictional boundaries. These agreements can memorialize how federal, tribal, state, and county officers work concurrently in law enforcement, but such agreements can be rescinded by local and state

³⁹ Perry, *supra* note 15.

⁴⁰ As of the publication of this benchguide, 20 of 109 federally recognized California tribes have a police department.

⁴¹ At least three tribes have cross-deputization agreements. See <http://www.courts.ca.gov/17422.htm>.

governments at any time.

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

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

Appendix A

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

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

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

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

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

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

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

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

(d) Notification and registration.--

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

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

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

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

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

Indian Civil Rights Act, 25 U.S.C. §§ 1301-1304, as amended by VAWA 2013:

§ 1301. Definitions: For purposes of this subchapter, the term

1. "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government.
2. "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;
3. "Indian court" means any Indian tribal court or court of Indian offense, and
4. "Indian" means any person who would be subject to the jurisdiction of the United States as an Indian under section 1153, title 19, United States Code, if that person were to commit an offense listed in that section in Indian country to which that section applies.

§ 1302. Constitutional Rights: No Indian tribe in exercising powers of self-government shall:

(a) In general

No Indian tribe in exercising powers of self-government shall—

1. make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
2. violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
3. subject any person for the same offense to be twice put in jeopardy;
4. compel any person in any criminal case to be a witness against himself;
5. take any property for a public use without just compensation;
6. deny to any person in a criminal proceeding the right to a speedy and public trial, to be

informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

7.

(A) require excessive bail, impose excessive fines, or inflict cruel and unusual punishments;

(B) except as provided in subparagraph (C), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 1 year or a fine of \$5,000, or both;

(C) subject to subsection (b), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 3 years or a fine of \$15,000, or both; or

(D) impose on a person in a criminal proceeding a total penalty or punishment greater than imprisonment for a term of 9 years;

8. deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

9. pass any bill of attainder or ex post facto law; or
10. deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

(b) Offenses subject to greater than 1-year imprisonment or a fine greater than \$5,000

A tribal court may subject a defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than \$5,000 but not to exceed \$15,000, or both, if the defendant is a person accused of a criminal offense who—

1. Has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or
2. Is being prosecuted for any offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

(c) Rights of defendants

In a criminal proceeding in which an Indian tribe, in exercising powers of self-government, imposes a total term of imprisonment of more than 1 year on a defendant, the Indian tribe shall—

1. provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and
2. at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;
3. require that the judge presiding over the criminal proceeding—
(A) has sufficient legal training to preside over criminal proceedings; and (B) is licensed to practice law by any jurisdiction in the United States;
4. prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government; and
5. maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

(d) Sentences

In the case of a defendant sentenced in accordance with subsections (b) and (c), a tribal court may require the defendant—

1. to serve the sentence—
 - (A) in a tribal correctional center that has been approved by the Bureau of Indian Affairs for long-term incarceration, in accordance with guidelines to be developed by the Bureau of Indian Affairs (in consultation with Indian tribes) not later than 180 days after July 29, 2010;
 - (B) in the nearest appropriate Federal facility, at the expense of the United States pursuant to the Bureau of Prisons tribal prisoner pilot program described in section 304(c)[1] of the Tribal Law and Order Act of 2010
 - (C) in a State or local government-approved detention or correctional center pursuant to an agreement between the Indian tribe and the State or local government; or
 - (D) in an alternative rehabilitation center of an Indian tribe; or
2. to serve another alternative form of punishment, as determined by the tribal court judge pursuant to tribal law.

(e) Definition of offense

In this section, the term "offense" means a violation of a criminal law.

(f) Effect of section

Nothing in this section affects the obligation of the United States, or any State government that has been delegated authority by the United States, to investigate and prosecute any criminal violation in Indian country.

§ 1303. Habeas corpus

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

§ 1304. Tribal Jurisdiction over Crimes of Domestic Violence

(a) Definitions.—In this section:

1. Dating Violence.—The term ‘dating violence’ means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

2. Domestic Violence.—The term ‘domestic violence’ means violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the domestic- or family-violence laws of an Indian tribe that has jurisdiction over the Indian country where the violence occurs.
 3. Indian country.—The term ‘Indian country’ has the meaning given the term in section 1151 of title 18, United States Code.
 4. Participating tribe.—The term ‘participating tribe’ means an Indian tribe that elects to exercise special domestic violence criminal jurisdiction over the Indian country of that Indian tribe.
 5. Protection order.—The term ‘protection order’—
 - (A) means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and
 - (B) includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a Pendente lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of the person seeking protection.
 6. Special domestic violence criminal jurisdiction.—The term ‘special domestic violence criminal jurisdiction’ means the criminal jurisdiction that a participating tribe may exercise under this section but could not otherwise exercise.
 7. Spouse or intimate partner. – The term ‘spouse or intimate partner’ has the meaning given the term in section 226 of title 18, United States Code.
- (b) Nature of Criminal Jurisdiction.—
1. In general.—Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed by sections 201 and 203 [25 USC § 1301 and 1303, respectively], the powers of self-government of a participating tribe include the inherent power of that tribe, which is hereby recognized and affirmed, to exercise special domestic violence criminal jurisdiction over all persons.
 2. Concurrent jurisdiction.—The exercise of special domestic violence criminal jurisdiction by a participating tribe shall be concurrent with the jurisdiction of the United States, of a State, or of both.
 3. Applicability.—Nothing in this section—
 - (A) creates or eliminates any Federal or State criminal jurisdiction over Indian country; or
 - (B) affects the authority of the United States or any State government that has been delegated authority by the United States to investigate and prosecute a criminal violation in Indian country.

4. Exceptions.—

(A) Victim and defendant are both non-Indians.—

Special Domestic Violence Criminal Jurisdiction Pilot Project Report 35

- i. In general.—A participating tribe may not exercise special domestic violence criminal jurisdiction over an alleged offense if neither the defendant nor the alleged victim is an Indian.
- ii. Definition of victim.—In this subparagraph and with respect to a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction based on a violation of a protection order, the term ‘victim’ means a person specifically protected by a protection order that the defendant allegedly violated.

(B) Defendant lacks ties to the Indian tribe.—A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant only if the defendant—

- i. resides in the Indian country of the participating tribe;
- ii. is employed in the Indian country of the participating tribe; or
- iii. is a spouse, intimate partner, or dating partner of—

1. a member of the participating tribe; or

2. an Indian who resides in the Indian country of the participating tribe.

(c) Criminal Conduct.—A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant for criminal conduct that falls into one or more of the following categories:

1. Domestic violence and dating violence.—An act of domestic violence or dating violence that occurs in the Indian country of the participating tribe.

2. Violations of protection orders.—An act that—

(A) occurs in the Indian country of the participating tribe; and

(B) violates the portion of a protection order that—

- i. 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;
- ii. was issued against the defendant;
- iii. is enforceable by the participating tribe; and
- iv. is consistent with section 2265(b) of title 18, United States Code.

d) Rights of Defendants.—In a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, the participating tribe shall provide to the defendant—

1. all applicable rights under this Act;
2. if a term of imprisonment of any length may be imposed, all rights described in section 202(c) [25 USC 1302(c)];
3. the right to a trial by an impartial jury that is drawn from sources that—
 - (A) reflect a fair cross section of the community; and
 - (B) do not systematically exclude any distinctive group in the community, including non- Indians; and
4. 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.

(e) Petitions to Stay Detention.—

1. In general.—A person who has filed a petition for a writ of habeas corpus in a court of the United States under section 203 [25 USC § 1303] may petition that court to stay further detention of that person by the participating tribe.
2. Grant of stay.—A court shall grant a stay described in paragraph (1) if the court—
 - (A) finds that there is a substantial likelihood that the habeas corpus petition will be granted; and
 - (B) after giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.
3. Notice.—An Indian tribe that has ordered the detention of any person has a duty to timely notify such person of his rights and privileges under this subsection and under section 203 [25 USC § 1303].

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

§ 6400. Short title

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

§ 6401. Definitions

In this part:

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

§ 6402. Judicial enforcement of order

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

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

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

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

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

(1) Identifies the protected individual and the respondent.

(2) Is currently in effect.

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

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

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

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

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

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

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

§ 6403. Nonjudicial enforcement of order

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

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

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

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

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

§ 6404. Registration of order

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

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

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

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

§ 6405. Immunity

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

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

§ 6406. Other remedies

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

§ 6407. Uniformity of application and construction

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

§ 6408. Severability clause

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

§ 6409. Application of Part

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

California Rules of Court Rule 5.386

Rule 5.386. Procedures for filing a tribal court protective order

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

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

(b) Process for registration of order

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

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

(c) No filing fee required

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

(d) Facsimile coversheet

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

Rule 5.386 adopted effective July 1, 2012.

APPENDIX B

California Criminal Jurisdiction in Indian Country Pursuant to Public Law 280

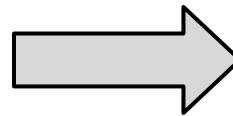
Offender	Victim	Jurisdiction
Non-Indian	Non-Indian	State jurisdiction is exclusive of federal government and tribal jurisdiction with one exception: tribes can prosecute non-Indians for domestic violence, dating violence, and violations of protective orders.
Non-Indian	Indian	State jurisdiction is exclusive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

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

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

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

If yes,



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

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

If yes,



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

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

Appendix D

State Resources

Federal Indian Law websites were developed and are maintained by the California Judicial Council:

Federal Indian Law- General; see www.courts.ca.gov/27002.htm

Federal Indian Law- Domestic Violence <http://www.courts.ca.gov/27542.htm>

California Tribal Court Directory website was developed and is maintained by the California Judicial Council. The directory is searchable by court and county. See link www.courts.ca.gov/14400.htm.

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

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

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

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

Other Resources

VAWA and the Courts website was developed and is maintained by the National Center for State Courts. See <http://www.vawaandcourts.org/states/California.aspx>

Tribal Law and Order Act Resource Center website was developed and is maintained by the National Congress of American Indian. See www.tloa.ncai.org

Tribal Protection Order website was developed and is maintained by Tribal Law and Policy Institute. See www.TribalProtectionOrder.org