

Emerging Strategies in Tribal-State Collaboration: Barriers and Solutions to Enforcing Tribal Protection Orders

December 6, 2017 Meeting Report¹



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Introduction

Tribally issued protection orders are a crucial means of providing safety and justice in Indian country, particularly given the extremely high rates of violence against Native women. However, for protection orders to be an effective means of providing safety, cross-jurisdictional enforcement is necessary.

The [Violence Against Women Act \(VAWA 2013\)](#) requires all tribes, territories, and states to recognize and enforce protection orders from any other jurisdiction.² Many states and tribes have codified VAWA in their statutes and court rules. Under these federal, state, and tribal laws, a protective order issued by a tribal or state court is entitled to full faith and credit.

Unfortunately, despite VAWA's legal requirements for enforcement, state enforcement of tribal protection orders has been a challenge. This impedes safety and justice in Indian country, provides victims with a false sense of safety, or in the alternative, offers no faith that the justice system can protect them. Lack of enforcement of protection orders confirms that the perpetrator is in control and need not fear the consequences of the violence.³ On December 6, 2017, the Tribal Law and Policy Institute (TLPI), in collaboration with

the Bureau of Justice Assistance (BJA), hosted a day-long meeting on the Agua Caliente Reservation to explore the barriers and explore promising strategies around the enforcement of tribal protection orders.

Background Summary

The meeting was attended by a variety of disciplines, including law enforcement, courts, and service providers—from state and tribal jurisdictions. Many of the meeting participants made collaboration a cornerstone of their approach to tackle the problem of enforcement of protection orders across jurisdictions—they had taken the time to engage in the respectful exchange of ideas, made a commitment to learn about each other's justice systems, and reached out to their justice partners to address this problem together. Discussion initially focused on several reasons why tribally issued protection orders are often not recognized by state and county law enforcement as valid. The forms may look different and therefore deemed invalid, or there may be a misunderstanding about the authority of tribal courts to issue such orders. Another widespread problem is the refusal to allow tribal orders to be entered into the state registry.⁴ While registration is not necessary for an order to be valid, some law enforcement agencies still view it as a

² See 18 U.S.C. § 2265. For more information, see generally www.TribalProtectionOrder.org and the federal full faith and credit page at <http://tribalprotectionorder.org/federal-law/>. The term *protection order* in this report refers to those defined by VAWA. For more detail on the types of orders covered by VAWA, see Appendix A: VAWA and Full Faith and Credit.

³ See Office on Violence Against Women framing paper <http://files.constantcontact.com/5212f69f401/4d2e25e4-3f96-472d-9790-30c02104cc3c.pdf?ver=1479229109000> for details.

⁴ Regions differ as to whether they have created local, county-wide, tribal, or statewide registries containing summary information of protection orders. For those jurisdictions that have created such registries, ideally, they have cross-system interoperability to prevent regional duplication and efficiently upload protection order information into the FBI National Crime Information Center—Protection Order File (NCIC-POF). Jurisdictional compatibility with NCIC-POF ensures that law enforcement nationwide can quickly verify existing protection orders, regardless of which jurisdiction initially issued the order.

requirement. Consequently, many tribal-state court forums⁵ include this issue as a priority topic, and many of these forums have attempted to address the issue of enforcement of tribal protection orders. Several effective strategies have emerged to address the issue. Collaboration, cooperation, and education across jurisdictional lines have been at the heart of these strategies.

To shine a light on these successful practices, TLPI invited four jurisdictions that have demonstrated effective strategies in tribal protection order enforcement. These sites were selected to cover a range of jurisdictional and geographical situations. The following are the jurisdictions presented on panels: California, New Mexico (Sandoval County), Arizona (Pascua Yaqui Tribe) and Michigan.

The panels shared the challenges they faced and detailed the successful strategies they developed to address those challenges. Participants in the meetings included tribal and state law enforcement, criminal justice personnel, federal agency representatives, tribal advocates, and training and technical assistance providers.

The purpose of the meeting was to create space for the teams to share common barriers to enforcement of protection orders; hear presentations on effective strategies for enforcement; and, most

importantly, to highlight innovative and successful strategies for this publication.

Several themes emerged in the panel presentations. The barriers identified by the panels can be grouped into five overall categories:

- 1. Failure to meet full faith and credit legal requirements;**
- 2. Problems with recognition of protection orders by law enforcement;**
- 3. Problems with verification of protection orders and interjurisdictional sharing of information;**
- 4. Interpersonal obstacles; and**
- 5. Limited services.**

These barriers and their solutions are summarized in the following pages with the intention that these successful practices might be duplicated, adapted, or modified where appropriate. The report concludes with recommendations on how to sustain success and institutionalize solutions.

Barrier #1:
Failure to meet full faith and credit legal requirements.

Solution:

- ✓ *Training and Technical Assistance*

Legal barriers are often cited when justice partners come together to work on improving public safety for victims of domestic violence. Conversations break

⁵ For more information on tribal-state court forums see: "Tribal-State Court Forums: An Annotated Directory," available at <http://www.walkingoncommonground.org/files/Tribal-State%20Court%20Forum%20BJA%20Approved%20Final%201-2016.pdf>; and "Policy Guidance for State, Local and

Tribal Justice Leaders: Advancing Intergovernmental Collaborative Strategies to Improve Public Safety," available at http://media.wix.com/ugd/8305c9_cd05fe6424a04b7c9985a30c72ff76cb.pdf.

down as tribal representatives espouse sovereignty and law enforcement counters with liability concerns. This report on effective strategies relating to the enforcement of tribal protection orders offers a more practical lens, informed by judicial and law enforcement leaders who have overcome barriers and devised solutions that work.

Only one true legal barrier was identified by these leaders:

Tribal orders that are not eligible for full faith and credit under VAWA due to one of the following common legal deficiencies:

- Insufficient facts to exercise jurisdiction,
- Insufficient facts that a protection order was violated, or
- Inadequate notice.

However, these legal deficiencies are easily addressed through training, and there are many resources that can help. For example, when the Pasqua Yaqui Tribal Court learned that clerks were giving information to law enforcement dispatch to enforce tribal protection orders without verifying that the person the order was against had been served, the problem was promptly remedied by a clerk training program.

Solution: Training and Technical Assistance

⁶ The Intertribal Working Group (ITWG) is a group of tribes that have implemented (or are considering implementing) the Special Domestic Violence Criminal Jurisdiction provisions of VAWA 2013. This group meets via conference calls and in person meetings on a regular basis to discuss challenges and successes of implementing jurisdiction

Facilitator-led training programs on drafting protection orders are available in most states. The Battered Women's Justice Project of the National Center on Protection Orders and Full Faith and Credit provides resources in this area. TLPI and National

Resources for Drafting Protection Orders

- ✓ TLPI's Tribal Protection Order website has information on drafting orders, enforcing orders, resources, and upcoming trainings:
www.TribalProtectionOrder.org.
- ✓ The Battered Women's Justice Project of the National Center on Protection Orders and Full Faith and Credit:
<http://www.bwjp.org/our-work/projects/protection-orders.html> and
<https://www.srln.org/node/21/about-srln>.

Congress of American Indians provides extensive training in this area, both in person and through distance learning, such as the Intertribal Working Group⁶ webinars.⁷

Education and training resources are widely available to alleviate this legal barrier.

**Barrier #2:
Problems with Recognition of Protection Orders by Law Enforcement**

Solutions:

- ✓ *Standardizing Tribal Protection Orders or Order Information*
- ✓ *Ongoing Training of Law Enforcement Officers*

In addition to legal barriers that may impede American Indian and Alaska Native victims from obtaining assistance from the legal system to address domestic violence,

against non-Indians, pursuant to VAWA 2013. See: <http://www.ncai.org/tribal-vaawa/pilot-project-itwg/about-itwg>

⁷ Webinar series available at: <http://www.tribal-institute.org/lists/webinars.htm>

there are numerous other barriers that victims face in obtaining safety. When one drills down, these are very real practical problems that require policy makers to come together across jurisdictions to find creative solutions. Meeting participants shared that law enforcement would not enforce tribal protection orders, because they did not recognize them as protection orders.

Because tribal orders may look different than the orders issued by state courts, officers in some jurisdictions do not recognize them and will decline to enforce them. Despite the federal full faith and credit mandate, many officers just do not know they are supposed to enforce facially valid tribal court orders. Meeting participants shared their solutions, which included:

Solution: Standardizing Tribal Protection Orders or Order Information

Some tribes have chosen to make their orders more like state court orders. Others have chosen to adopt Project Passport, which recommends that a standard cover sheet be attached to tribal and state protection orders, enhancing enforcement because the first page of all orders looks the same.

Some tribes and states have adopted the Hope Card. In 2004, the Bureau of Indian Affairs, in collaboration with the Crow Nation of Montana, created the Purple Feather Campaign, which over time expanded statewide and became known as the Hope Card Project. The Hope Card was a solution for the Crow Nation that sought to address the failure to recognize and enforce valid tribal protection orders, the inability

to locate or decipher critical data on the order, and the inability to review lost or damaged pages of an order. The Hope Card has been adopted by some states and allows anyone who has a nontemporary valid civil protection order to obtain a laminated card, similar in size and shape to a credit card, that summarizes the protection order's critical information. Not only does it help with recognition and enforcement, it offers victims a durable and convenient means of carrying pertinent information regarding an existing order. The

Resources Standardizing Tribal Protection Orders

- Learn about New Mexico's experience when their Tribal-State Court Consortium began to promote Project Passport:
<https://tribalstate.nmcourts.gov/history.aspx>.
- Check out Project Passport resources at the National Center for State Courts:
<http://www.vawaandcourts.org/~media/Microsites/Files/VAWA/Passport%20Items/Passport%20Project%20Description%202014.ashx>.
- Learn about Crow Nation's Hope Project:
http://www.bwjp.org/assets/documents/pdfs/promising_practice_the_hope_card_project.pdf.

FRONT OF CARD		BACK OF CARD													
<p align="center">RESPONDENT</p> <p>John Doe DOB: 06/02/1967</p> <p>Race: C Sex: Male Height: 6'2" Weight: 185 Eyes: Brown Hair: Brown</p> <p>Scars / Marks / Tattoos: Dragon Tat on L. Shoulder</p> <p>Ready Disqualified: Y</p> <p align="center">Protection Order</p> <p><small>This card certifies that the person named on the back of this card has a Protection Order on file with the State of Indiana against the individual listed above. Violation of the Protection Order is a Class A misdemeanor or Class D felony under I.C. § 35-46-1-15.1 Pursuant to 18 U.S.C. § 2201, Protection Orders issued by outside jurisdictions shall be provided full faith and credit.</small></p>		<p>State of Indiana</p> <p>County: Ada Court: Justice Case No.: 12345678 Issued date: 10/05/2011 Expires: 10/05/2013</p> <p>Petitioner Sueie Doe DOB: 05/02/1968 Sex: Female Race: Caucasian Height: 5'3"</p> <p>Other People Protected by this Order:</p> <table border="0"> <tr> <td>John Doe</td> <td>05/2008</td> <td>Sueie Doe</td> <td>05/2005</td> </tr> <tr> <td>John Doe</td> <td>05/2007</td> <td>Jimmy Doe</td> <td>05/2004</td> </tr> <tr> <td>Alan Doe</td> <td>05/2006</td> <td>Eddie Doe</td> <td>05/2003</td> </tr> </table> <p align="center"><small>Law Enforcement Must Verify This Order With the Indiana Protective Order Registry</small></p>		John Doe	05/2008	Sueie Doe	05/2005	John Doe	05/2007	Jimmy Doe	05/2004	Alan Doe	05/2006	Eddie Doe	05/2003
John Doe	05/2008	Sueie Doe	05/2005												
John Doe	05/2007	Jimmy Doe	05/2004												
Alan Doe	05/2006	Eddie Doe	05/2003												

Hope Card

design of the card combines law enforcement's immediate need for information in response to a domestic violence incident with a victim's need for safety and convenience.

Locally, tribal court judges and state court judges have shared each other's orders and adapted them to look like one another. An advantage in one region was that when the Northern California Tribal Courts Coalition did this with the California Judicial Council, their partnership resulted in interactive fillable forms for both the state and tribal protection order forms.

Short of making forms look similar is adding the VAWA's full faith and credit language⁸ to tribal protection orders, which many tribes have done.

Solution: Ongoing Education of Law Enforcement

While the federal requirements have been clear, a reminder of law enforcement's obligations and responsibilities can sometimes go a long way, especially if the messenger is one of their own. Generally, professionals listen and learn best when the educator is in the same profession and field.

California Attorney General on Tribal Protection Orders

"Federal and state law require the officers to enforce the TPO on the spot. The law requires the officer to give the protection order full faith and credit . . . "

To watch the PSA:

http://www.courts.ca.gov/documents/tribal_bulletin-court-protection-orders.pdf

For this reason, many states, including Alaska, California, Florida, Kansas, and North Dakota,⁹ have issued Attorney General Opinions or Informational Bulletins that effectively reiterate and reinforce VAWA's full faith and credit provision and their application to tribal protection orders. Washington State, following suit, has also requested an Attorney General Opinion. Several forums have partnered with law enforcement to develop education and training materials. Some have gone a step further and requested an endorsement of the law in writing and in a training video by the state's top cop: in California, the attorney general issued a bulletin directing law enforcement to enforce federal and state law, and partnered with the state association of law enforcement officers, and the Judicial Council to develop and distribute an educational video¹⁰ with associated educational training materials for law enforcement and judges. This video

features the state attorney general, the chief deputy attorney general, tribal court judges and a county sheriff. Many of the tribes in California have added this bulletin to the back of their orders.

⁸ See: <http://tribalprotectionorder.org/tips-for-drafting-tribal-protection-orders/>.

⁹ See: Alaska: http://www.law.alaska.gov/pdf/opinions/opinions_2015/15-005_AN2013102606.pdf; California: http://www.courts.ca.gov/documents/tribal_bulletin-court-protection-orders.pdf; North Dakota:

<https://attorneygeneral.nd.gov/sites/ag/files/Legal-Opinions/9510.pdf>; Kansas: <http://ksag.washburnlaw.edu/opinions/1995/1995-107.htm>; and Florida:

<http://www.myfloridalegal.com/ago.nsf/Opinions/14C57B087CEFE217852563A30046176B>.

¹⁰ To access the California educational video, see: <https://www.youtube.com/watch?v=boFB0lxNhEQ>

Barrier #3

Problems with Verifying Tribal Protection Orders and Interjurisdictional Sharing of Information

Solutions:

- ✓ *Access to State and Federal Database and Moving Away from Reliance on Databases*
- ✓ *Sharing among Tribal and Nontribal Law Enforcement*
- ✓ *Sharing Among Tribes and Prosecutors*
- ✓ *Sharing Among Tribal and State Courts*
- ✓ *Sharing Among Tribes*

In some jurisdictions, if law enforcement cannot verify the tribal protection order in the National Crime Information Center¹¹ (NCIC) or state crime information systems, then they will not enforce them. Such verification procedures may be best practice for law enforcement, but it is in direct violation of VAWA.¹² Moreover, not all tribes have access to these databases and, thus, cannot directly enter their orders into them.

The Tribal Law and Order Act (TLOA) (Pub. L. 111–211, H.R. 725, 124 Stat. 2258,

enacted July 29, 2010) amended 28 U.S.C. 534 to permit tribal law enforcement agencies that meet certain requirements access to national crime information databases. Despite this, tribes' ability to fully participate in information sharing using state networks has been dependent on various statutes, regulations, and policies of the specific states in which tribes' lands are located. The result is piecemeal and inequitable. Public safety is jeopardized when a person, who reasonably expects to be protected by local law enforcement because he or she has sought and obtained a valid protective order, is told that the order cannot be enforced because it is not in a national or statewide database. The public trust and confidence in all courts and law enforcement are undermined when these orders are not enforced.

As amended by the TLOA, 28 U.S.C. 534(d) authorizes the release of criminal history information to tribal law enforcement, yet critical information concerning public safety is not always shared: (1) among tribes; (2) among tribal and nontribal law enforcement; (3) sharing among tribes and prosecutors; and (4) among tribal and state courts.

For cross-jurisdictional enforcement to be effective, this information must be shared and easily accessed by law enforcement.

¹¹ Some of the confusion may stem from the NCIC Manual Section 3.5 Hit Confirmation Procedures. Any agency that receives a record(s) in response to an NCIC inquiry must confirm the hit on any record(s) that appears to have been entered for the person or property inquired upon prior to taking any of the following actions based upon the hit NCIC record: (1) arresting the wanted person, (2) detaining the missing person, (3) seizing the stolen property, or (4) charging the subject with violating a protection order.

Additionally, an agency detaining an individual on local charges where the individual appears identical to the subject of the wanted person record and is within the geographical area of extradition must confirm the hit. This hit confirmation may result in unnecessary delays, placing the safety of the protected person at risk of being revictimized.

¹² See *supra*, note 2.

Solution: Access to State and Federal Database and Moving Away from Reliance on Databases

In many states, law enforcement will not rely on the state or federal database, but instead will follow the law and recognize all facially valid protection orders, including tribal orders, as mandated under VAWA. In other states, despite VAWA, law enforcement will not universally enforce tribal protection orders if they are not found in their state or the federal database.

While the law protects law enforcement officials who, in good faith, rely on facially valid protection orders and arrest the person to be restrained, there are some who fear their offices will be liable for falsely imprisoning the person to be restrained. For this reason, some tribes, with the infrastructure and funding, have turned to the Tribal Access Program () described in more detail in the following text.

Solution: Sharing among Tribal and Nontribal Law Enforcement

Meeting participants shared three solutions: memorandums of understanding (MOUs), registration of protection orders,

and the Tribal Access Program (TAP). In some jurisdictional pockets within certain states, tribal police and county sheriff deputies have built trust and developed excellent professional relationships through regular meetings and learning about each other's practices. The results have been:

1. MOUs to operationalize cross-deputation agreements (Arizona, Michigan and California);
2. cross-commission agreements¹³ (New Mexico);
3. county contractual agreements with tribes for law enforcement services (Michigan); and
4. noticing arrangements where county law enforcement serves persons to be restrained in tribal court (Michigan and California).

These types of relationships and solutions facilitate the sharing of information and leverage law enforcement services for the benefit of all citizens.

The Tribal Law and Order Act

(TLOA) confirms tribal law enforcement ability to access to "Federal criminal information databases" including the National Crime Information Center (NCIC) database:

The Attorney General shall permit tribal and Bureau of Indian Affairs law enforcement agencies— to access and enter information into Federal criminal information databases; and to obtain information from the databases. 28 USC 534(d)

¹³ To view sample cross-deputation agreements, see <http://www.courts.ca.gov/17422.htm>. To view Office of Community Policing resource on cross-deputization

agreements, see <https://ric-zai-inc.com/ric.php?page=detail&id=COPS-P363>.

Under VAWA (18 U.S.C. 2265(d)(2)), protection orders are accorded full faith and credit even if they are not registered or filed in the enforcing state, tribe, or territorial jurisdiction. Because tribal members still encounter law enforcement who decline to enforce their protection orders if they are not verified in the national and statewide databases, some tribes have partnered with their states to share their orders through a process called registration. Both Michigan and New Mexico have statutes that permit registration or domesticating tribal protection orders. California adopted a statewide rule of court (see Cal. Rule of Court, rule 5.386) that requires each superior court, upon the request of a tribal court within the county, to adopt a procedure to allow for the fax or electronic registration of protection orders issued by the tribal court. Should a tribal court choose to register its protection order, then it is entered into the national and statewide databases just as if it were a state court protection order.

Meeting participants learned how TAP, a program to provide federally recognized tribes the ability to access and exchange data with national crime information

databases for both civil and criminal purposes, promotes the sharing of information. The TLOA and the VAWA 2005 require the U.S. attorney general to ensure that tribal law enforcement officials who

The Violence Against Women Act (VAWA 2013) requires all tribes, territories, and states to recognize and enforce protection orders from any other jurisdiction. 18 U.S.C. 2265(a) provides as follows:

“Any protection order 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, Indian tribe, or territory.” [18 U.S.C. 2265\(a\)](#)

meet applicable federal or state requirements be permitted access to national crime information databases. In addition, certain federal laws—such as Title I of the Adam Walsh Child Protection and Safety Act of 2006 and the Sex Offender Registration and Notification Act (SORNA)—require entry of tribal sex offender biometrics and biographical data into national crime information databases, including the National Sex Offender Registry. However, the reality is that many tribes have limited or no access to these databases and, until TAP, that access depended upon various regulations,

statutes, and policies of the states in which tribal lands are located.

By ensuring the exchange of critical data, tribal, state, and federal jurisdictions have succeeded in:

- Preventing a person convicted of domestic violence from purchasing a firearm after police identified an imminent threat to his former spouse;
- Stopping a firearm purchase by a known drug user who had been found mentally incompetent to stand trial;
- Entering orders of protection so that victims no longer had to personally take the order to the county sheriff’s office;

- Conducting required fingerprint-based background checks for emergency foster care placement; and
- Providing tribal criminal histories through arrest, booking, and tribal court disposition entries.

The Pascua Yaqui Tribe has successfully used TAP to share information with other tribes and the state.¹⁴ One of the practical problems the Pascua Yaqui Tribe has faced is uploading the backlog of tribal protection orders into NCIC.

In Arizona, perpetrators are known to follow their victims off reservation. There are seven tribal communities within ten miles of the Tucson metropolitan area. In one year, 16 defendants had 86 police contacts; however, because law enforcement did not share protection order information, they were not arrested. Without TAP, victims were going to both tribal and state court to seek protection orders.

Meeting participants who have access to TAP identified the issue that tribal and federal crime definitions and remedies do not match. By way of explanation, the enforcing jurisdiction must enforce the valid terms and conditions in the orders from the issuing jurisdiction even if those terms and conditions are not ones available under the laws of the enforcing jurisdiction. This is important when looking at orders being issued by tribal courts and enforced by state or county law enforcement because tribal law may provide for creative civil remedies against non-Indian offenders over

whom the tribe may not have criminal jurisdiction.

Currently, if a tribal court wants to make sure its order for a given crime is uploaded into the NCIC, it must select the federal crime that is most like the crime committed by the offender in tribal court.

While TAP is an excellent tribal resource, many tribes cannot access it because they are too small or lack the infrastructure to comply with the SORNA or they have limited law enforcement and cannot meet the other law enforcement requirements.¹⁵ Nevertheless, TAP has the potential to fulfill the VAWA 2005 mandate to provide tribal access to NCIC, but only if the funding restrictions are lifted and additional tribal resources are made available for those tribes that lack the infrastructure to implement it.

Solution: Sharing among Tribes and Prosecutors

Meeting participants identified the problem that habitual offenders in tribal communities are not often prosecuted in non–Public Law 280 states. In Arizona, a partnership between the Pascua Yaqui Tribe and federal prosecutors led to an offender who was prosecuted in tribal court for domestic violence being charged as a habitual offender in federal court. Similarly, under New Mexico statutes, if an offender has more than two tribal or state domestic violence convictions, he is charged with a fourth-degree felony in state court.

¹⁴ To learn more about the Pascua Yaqui Tribe's use of TAP, see: <https://www.justice.gov/opa/pr/pascua-yaqui-tribe-announces-deployment-tribal-access-program-improve-exchange-national-crime>.

¹⁵ For a full listing of TAP tribes, see <https://www.justice.gov/tribal/tribal-access-program-tap>

Meeting participants also raised the problem of prosecuting offenders who leave the tribal jurisdiction. The Pascua Yaqui Tribe has been able to prosecute these offenders in special domestic violence criminal jurisdiction cases.¹⁶ The tribal court has issued warrants for individuals who flee the reservation boundaries to avoid prosecution in tribal court. The Tribal Access Program (TAP) has assisted in the extradition¹⁷ of these individuals to tribal court to face justice for acts committed on the reservation.

The problem remains that domestic violence incidents often involve other attendant crimes that are prosecuted at the same time. They typically involve a wide range of other criminal activity, including property crimes (such as burglary or trespass), financial crimes (such as theft or intentional destruction of credit), drug crimes (such as involuntary drugging), trafficking crimes (such as drunk or drugged driving, or reckless driving where the victim is an involuntary passenger), crimes against children, property crimes, drug crimes, and traffic crimes. Tribes exercising special domestic violence criminal jurisdiction under VAWA 2013 may not be able to prosecute these crimes if the perpetrator is non-Indian. Meeting participants contemplated a legislative fix, such as an expansion of tribal jurisdiction in VAWA 2018 or a full Oliphant fix.¹⁸

¹⁶ VAWA 2013 authorizes participating tribes to exercise “Special Domestic Violence Criminal Jurisdiction” (SDVCJ) over non-Indian defendants for acts of domestic violence or dating violence; and violations of certain protection orders. For more information, see:

http://www.ncai.org/resources/ncai-publications/SDVCJ_5_Year_Report.pdf

¹⁷ See Arizona State statute:

<https://www.azleg.gov/ars/13/03869.htm>.

Solution: Sharing among Tribal and State Courts

Meeting participants shared that the NCIC does not provide a vehicle for courts to exchange protective order information, and this can lead to enforcement issues. Through the California Courts Protective Order Registry (CCPOR),¹⁹ which is a dedicated online database of the state judicial branch, state courts and tribal courts can view each other’s protection orders. At the tribal courts’ and state courts’ option, courts can scan their orders into the database. The courts that have access are better able to protect the public, particularly victims of domestic violence, and avoid issuing redundant or conflicting orders.

Solution: Sharing among Tribes

Meeting participants shared solutions, such as intertribal agreements. For example, through a MOU, one pueblo in New Mexico has agreed to enter protection orders into NCIC for all pueblos in the region.

¹⁸ In *Oliphant v. Suquamish Indian Tribe* (1978) the Supreme Court held that tribal courts do not have jurisdiction to try or punish non-Indian offenders.

¹⁹ To learn more about CCPOR see, www.courts.ca.gov/15574.htm.

Barrier #4

Interpersonal Obstacles

Solution:

- ✓ *Building Trust, Understanding, and Mutual Respect*

Fundamental to working effectively with tribal governments and American Indian and Alaska Native people is the establishment of working relationships based on an understanding of the history, culture, and present concerns of individual tribes and their tribal justice systems. Yet this education is sadly lacking in our schools and in most educational programs for judges, law enforcement, and other justice partners.

Participants shared instances in which disinterest, ignorance, and bias thwarted partnerships and ultimately justice.

One participant described a situation in which drug traffickers were not prosecuted because the county prosecutor and state court judge would not accept the evidence collected by the tribal canine unit. The inference was that Indian dogs could not be trustworthy.

Meeting participants acknowledged that the perception, real or imagined, is that in some places state court judges, county and federal prosecutors, and nontribal law enforcement do not believe tribal justice systems are credible institutions. And these perceptions have led to the further erosion of trust that is needed to build critical working partnerships among judges, prosecutors, and law enforcement to ensure public safety.

One tribal court judge shared her persistent efforts to establish a professional relationship with a state court judge. At first, he refused to acknowledge her, ignored her overtures, until, in her words, she “stalked” him by joining his book group, which led to a collegial relationship.

Solutions: Building Trust, Understanding, and Mutual Respect

In California, to assist judges in establishing relationships, the Judicial Council’s tribal/state program staff will serve as a bridge and pave the way for tribal court judges and local state court judges to meet by making the introduction or gathering information relating to the tribe and the state court. This two-way welcoming approach has aided in building trust and getting relationships off to the right start.

At the meeting, participants were passionate about their collaboration in their tribal-state court forums and the fact that they came together to problem solve because they shared common problems. They described how they deepened their conversations with each other and justice partners to build trust, understanding, and mutual respect. This commitment to solve problems together is what drives them to be persistent and creative in their efforts to reach out across jurisdictions and educate one another and their partners both informally and through formal educational programs.

Barrier #5

Limited Services

Solution:

- ✓ *Leveraging and Maximizing Services through Creative Partnerships*

While protection orders are an essential piece to victim safety, participants at the meeting discussed how other challenges are intertwined with victim safety. Many tribes are in rural and isolated areas with the associated barriers of poverty, such as lack of housing, transportation, employment, emergency services, victim services, and safe houses/shelters. In addition, their citizens face greater stigma due to reduced anonymity, difficulty accessing and enforcing legal protection, and limited police presence. These barriers complicate tribes' ability to respond to domestic violence and add to what American Indian and Alaska Native people must overcome to remove themselves from unsafe situations.

Limited Victim Services: Most of the money from the VAWA 2013 is earmarked for tribal governments and reservation-based advocacy programs. The advocacy programs in tribal communities are critical; however, that money is not sufficient for rural tribal communities and is largely unavailable to urban community centers and Native-based advocacy programs off reservation.

Lack of Services for Perpetrators: While it is important to hold perpetrators accountable, treatment can be an effective way to do that while offering the possibility of changing behavior patterns and reducing the chance of abuse occurring again. While there is federal funding for victim services,

there is very little funding and supports for perpetrators. States have mandatory batterer intervention programs; however, none are culturally suited for American Indian and Alaska Native peoples. In California, the Northern California Tribal Courts Coalition, comprised of five federally recognized Indian tribes, Bear River Band of Rohnerville Rancheria, Hoopa Valley Tribe, Karuk Tribe, Tolowa Dee-ni' Nation, and the Yurok Tribe, created a traditional, culturally appropriate batterer intervention program, open to Native and non-Native people in the region.

Lack of Tribal Jails: Most tribes do not have the capacity to incarcerate offenders and cannot afford to contract for beds with the state where they are located. The TLOA authorized a pilot program allowing certain offenders sentenced in tribal courts to be housed in Bureau of Prisons facilities,²⁰ however, the Bureau of Prisons pilot project expired on November 26, 2014, and Congress needs to reauthorize the program to expand it. Meeting participants contemplated the expansion of this pilot program to all tribes.

Lack of Tribal Court Services or No Tribal Court: Some tribal communities are too small to operate a court; others have court once or twice a week and, therefore, tribal citizens have no choice but to go to state court for their protection orders, yet they distrust the state courts and their access is limited.

Solution: Leveraging and Maximizing Services through Creative Partnerships

Rural and urban tribal communities have by necessity developed partnerships to create victim services. By putting tribal advocates and victims first, the Nottawaseppi Huron Band of the Potawatomi (NHBP) Tribe in Michigan has created services and support at no cost to tribal members. The advocates assist petitioners with the protection order request and work with county law enforcement to serve the party to be restrained. Tribal members also access the county shelter and other supportive services at no cost to tribal members. The tribal/county partnerships are so strong that the NHBP Tribe has a restaurant and garden that donates to local nonprofits both tribal and nontribal to support the community.

The Coalition to Stop Violence Against Native Women calls for the creation of a direct stream of funding for tribal victims of crime from the Crime Prevention Fund. The fund, created by the Victims of Crimes Act (VOCA) pays for itself by collecting criminal fees, forfeited bonds, penalties, special assessments, gifts, and donations. Every state has access to these funds, and if tribes received a proportional share based on their high rate of victimization, then tribal communities could better address their citizens' needs for victim services.

In New Mexico, the state administrative office of the courts engaged the citizens of the pueblos and established extensive services and support to those accessing the state court for protection orders. At the courthouse, advocates assist with notice and petitioners access kiosks that use *guide and file*, which is a software that walks the

victim and perpetrator through the court forms. This program or one like it is used in California and other states.

Effective March 1, 2018, New Mexico will be the first state court in the country that will file protection orders in any language submitted; as a first step, all forms have already been translated into Navajo.

In California, the Judicial Council launched a statewide needs assessment, called the Native American Community Justice project. By hiring the tribal consultants identified by tribal leaders, convening focus groups within tribal communities, and holding a statewide conference to share the responses, the Judicial Council has been able to partner with tribes, tribal court judges, tribal law enforcement, and tribal advocates. The needs assessment has served as a blueprint for improving access to the state court for tribal communities without a tribal court.

Sustaining Solutions

Meeting participants discussed strategies to sustain their hard-earned solutions, given turnover of judges and justice partners. The focus of the conversation was how to take solutions initially reached through collaboration to the next level by institutionalizing them. Participants identified the following strategies:

Sustaining Strategies:

- ✓ Codifying solutions through statutes and rules of court
- ✓ Developing educational curricula and other materials

- ✓ Establishing collaborations statewide and locally (such as tribal-state court forums)
- ✓ Ongoing assessment of the civil protection order interjurisdictional procedures.

Sustaining Strategy: Codifying Solutions through Statutes and Rules of Court

New Mexico (NMSA 1978, Section 40-13A-2(G) and (3)) and California (Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, Family Code Section 6400 et seq.) codified VAWA in their state statutes.

Arizona (Rule 3-7 of the Arizona Rules of Court) and Michigan (MCR 2.615, MCL 600.2950j) did more through very broad rules of court, which give comity to *all* tribal judgments. Basically, the Michigan rule states that a tribal court judgment is recognized if the tribe or tribal court has enacted a reciprocal ordinance, court rule, or other binding measure that obligates the tribal court to enforce state court judgments, and that ordinance, court rule, or other measure has been transmitted to the Michigan State Court Administrative Office. The Arizona rule does not require reciprocity and has a provision that permits the tribal and state court judges to, after notice to the parties, communicate and resolve any disputes. The question of whether civil harassment orders are entitled to full faith and credit or comity was raised, and the answer was not under

federal law and generally not under state laws, unless they adopted a rule of court like Michigan, Arizona, or Minnesota (see previous section) or enacted legislation.

Most recently, the Minnesota Supreme Court has issued a robust rule recognizing tribal court orders (Minn. Gen. R. Prac. 10.01-.02). Because of a petition of the Minnesota tribal-state court forum, the court amended an earlier rule, giving due deference and respect to tribal courts.

Sustaining Strategy: Developing Educational Materials and Other Material

Simple listings of tribal court information in the form of a directory can be an easy way to educate state agencies about tribal courts, and several states have developed these.²¹ Some states have incorporated federal Indian law and interjurisdictional issues relating to domestic violence into their state judicial branch's educational programing; however, not all states have mandatory education on domestic violence for judges. In California, this education is mandated, and tribal representatives serve on the educational planning committee, which ensures state court judges are trained on this subject.

In New Mexico and California, there are ample opportunities for tribal and state court judges to meet and learn about each other. All state judicial educational programs are open free of cost to tribal court judges. Not only are educational resources shared, but when issues arise,

²¹ A few of these tribal court directories include California (<http://www.courts.ca.gov/programs-tribal.htm>); Michigan (<http://courts.mi.gov/courts/tribalcourts/pages/default.aspx>);

and New Mexico (<https://tribalstate.nmcourts.gov/how-to-contact-tribal-courts-in-your-jurisdiction.aspx>).

these state and tribal justice systems can respond quickly. For example, when it was determined that not all judicial districts in New Mexico were registering tribal protection orders, a statewide clerk training was conducted. When issues relating to law enforcement response to tribal communities arose, these justice systems in California quickly convened local cross-court educational exchanges. They are cochaired by the tribal court judge and state court judge in the area and staffed by the Judicial Council. The judges invite tribal leadership, local county, and tribal professionals who work in the fields of law enforcement, child welfare, juvenile and criminal law, education, mental health, probation, social services, victim and other supportive services. These exchanges foster relationships, provide education, identify local issues and solutions, and build on local successes to promote statewide improvements.

The Michigan Tribal State Federal Judicial Forum and the Michigan Supreme Court's Judicial Institute also regularly conducts judicial education on domestic violence in tribal communities. And, through its partnerships with law enforcement, has established a model law enforcement policy relating to recognition of protection orders.²²

By having this educational infrastructure and relationships, when family court judges in one county in Michigan were convinced that there were no Native Americans living in their jurisdictions, the Michigan Forum could promptly respond by convening a judicial and clerk training.

In California, judicial online materials have modules on federal Indian law generally, federal Indian law relating to domestic violence, and tribal justice systems. Its Forum, in collaboration with the California Court Clerks Association, California State-Federal Judicial Council, the California Tribal Court Clerks Association, the California Court Executives Advisory Committee, and the National Judicial College developed a toolkit encourage cross-court site visits and education.

Sustaining Strategy: Establishing Collaborations—Statewide and Locally

Participants were invited to this meeting because they have ongoing and active collaborations in the forum of tribal-state court forums, which have been institutionalized. Each of the forums in these jurisdictions have lived through turnover in tribal court chief judges and supreme court justices. The reason for their longevity after this turnover is that they have been strategic in taking steps to institutionalize their collaborative bodies.

Participants agreed that if one's jurisdiction does not have a forum, be persistent in finding allies and use the judicial power of convening. For example, if the root cause of inconsistent enforcement of protection orders is that the judges are not recognizing tribal protection orders, then participants identified these strategies: (1) a judge-to-judge conversation; (2) reaching out to staff at the state court's administrative office of the courts who may be able to follow up with the specific judge; or (3) a judicial and

²² To learn more about Michigan Commission on Law Enforcement Standards, Model Policy on law enforcement

recognition of protection orders, see: [Model Policy Law Enforcement \(7/15/09\)](#).

court administrative training may be warranted. If, however, the issue is more with law enforcement, then finding allies within the state’s Department of Justice, with local sheriffs, and with a U.S. attorney general may be the better course. In California, the Forum used this strategy with its justice partners. Local sheriffs rallied to create law enforcement training materials and the California attorney general issued a Department of Justice bulletin directing law enforcement to follow federal and state law. The partnership took this a step further and created a public service announcement (PSA), referring judges and law enforcement to training resources.²³

Sustaining Strategy: Ongoing Assessment of the Civil Protection Order Interjurisdictional Procedures

Tribal-state court forums have been instrumental in convening local collaborations to address domestic violence. They are sometimes called focus groups, listening sessions, or cross-court educational exchanges. There are also statewide initiatives that call for local collaborations. For example, New Mexico has established Community Coordinated Response Teams, which review closed cases and identify system failures to better coordinate responses. In Arizona, the Pascua Yaqui Tribe and federal authorities (FBI and U.S. attorney general) convene monthly face-to-face meetings to review all cases, including those involving domestic violence. In California, forum staff is available to help tribal court judges and

state court judges convene cross-court educational exchanges on domestic violence, and some counties have Domestic Violence Coordinating Councils that respond to local issues.

Some jurisdictions use their partnerships to conduct ongoing assessment of their civil protection order systems, and the National Center for Full Faith and Credit has developed a tool that can help these partnerships. The publication “Engaging in a Best Practice Assessment of the Civil Protection Order System” is available at <http://www.bwjp.org/assets/documents/engaging-in-a-best-practice-assessment-of-the-civilp.pdf>.

Conclusion

The goal of this convening was to highlight key barriers and solutions that jurisdictions have identified for the enforcement of tribal protection orders—all with the end goal to develop a more seamless response to domestic violence cases so that law enforcement and the judicial process work for cases arising on tribal land just as effectively as they work for cases on nontribal land. Working effectively together entails respectful interactions between authorities, understanding tribally specific histories and cultures, and knowledge of available and appropriate services. All the leaders who were invited to participate in this meeting have such working relationships and have experience working through the barriers and creating solutions together.

²³ To watch the PSA:
http://www.courts.ca.gov/documents/tribal_bulletin-court-protection-orders.pdf

Appendix A: Additional Resources

Publications/Webinars/Websites

The Battered Women's Justice Project, National Center on Protection Orders and Full Faith & Credit, *Engaging in a Best Practice Assessment of the Civil Protection Order System*.

<http://www.bwjp.org/assets/documents/engaging-in-a-best-practice-assessment-of-the-civilp.pdf>

Battered Women's Justice Project, National Center on Protection Orders and Full Faith & Credit, Model Tribal Domestic Violence Full Faith and Credit Ordinance

<https://media.dojmt.gov/wp-content/uploads/Model-Tribal-Domestic-Violence-Full-Faith-and-Credit-Ordinance-1.pdf>

The Battered Women's Justice Project National Center on Protection Orders and Full Faith & Credit, *Full Faith and Credit: Assisting Survivors with Enforcement Across Jurisdictional Lines*.

<http://www.bwjp.org/resource-center/resource-results/full-faith-and-credit-for-protection-orders-assisting-survivors-with-enforcement-across-jurisdictional-lines.html>

The Battered Women's Justice Project National Center on Protection Orders and Full Faith & Credit, *Protecting Victims of Domestic Violence: A Law Enforcement Officer's Guide to Enforcing Protection Orders Nationwide*

<http://www.bwjp.org/resource-center/resource-results/protecting-victims-of-domestic-violence-a-law-enforcement-officer-s-guide-to-enforcing-protection-orders-nationwide.html>

Sarah Deer and Melissa Tatum, Tribal Efforts to Comply with VAWA's Full Faith and Credit Requirements: A Response to Sandra Schmieder, *Tulsa Law Review*, Vol. 39, page 403

<http://www.tribal-institute.org/download/DeerTatum.pdf>

Judicial Council of California, Recognition and Enforcement of Tribal Protection Orders in California

http://www.courts.ca.gov/documents/Tribal-RecognEnf_Brochure.pdf

National Center for Juvenile and Family Court Judges, A Passport to Safety: A Judges Benchcard

<http://www.ncjfcj.org/sites/default/files/a-passport-to-safety.pdf>

National Center for State Courts, Extending Project Passport

<http://www.vawaandcourts.org/Cross-Jurisdictional-Efforts/Extending-Project-Passport.aspx>

Office on Violence Against Women, Enforcement of Tribal Protection Orders Pursuant to the Violence Against Women Act Framing Paper

<http://files.constantcontact.com/5212f69f401/4d2e25e4-3f96-472d-9790-30c02104cc3c.pdf?ver=1479229109000>

Tribal Law and Policy Institute, National Council of Juvenile and Family Court Judges and National Congress of American Indians Webinar Series

<http://www.tribal-institute.org/lists/webinars.htm>

Series includes:

- ✓ *Issuing Protection Orders Webinar (Hon. Steven D. Aycock, and Kelly Gaines Stoner)*
- ✓ *Contempt and Tribal Protection Orders Webinar (Hon. Steven D. Aycock, and Kelly Gaines Stoner)*
- ✓ *Enforcing protection orders generally and for VAWA Special Domestic Violence Criminal Jurisdiction Webinar (Hon. Steven D. Aycock, and Kelly Gaines Stoner)*

Tribal Law and Policy Institute, Tribal Protection Order Web Resource

<http://tribalprotectionorder.org>

Tribal Law and Policy Institute, *Tribal Court Bench Book for Domestic Violence Cases*

<http://www.tribal-institute.org/download/VAWA+Bench+Book.pdf>

Gloria Valencia-Weber and Christine P. Zuni, *Domestic Violence and Tribal Protection of Indigenous Women in the United States*, St. John's Law Review, Vol. 69, Issue 1.

<https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=1634&context=lawreview>



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Appendix B: Meeting Agenda

Emerging Strategies in Tribal-State Collaboration: Enforcement of Tribal Protection Orders December 6, 2017 Renaissance Hotel ~ Mojave Learning Center Palm Springs, CA

AGENDA

9:00AM – 9:15AM Welcome and Introductions

Tribal Law and Policy Institute (TLPI)

Jerry Gardner, Executive Director

Heather Valdez Freedman, Program Director

William Thorne, Retired Judge, Consultant

Bureau of Justice Assistance (BJA)

Norena Henry, Senior Policy Advisor

9:15AM – 9:30AM Purpose of the Meeting/Overview of the Day

William Thorne, Retired Judge, Consultant

9:30AM – 10:00AM Overview of Barriers to Tribal Protection Order Enforcement

Kelly Stoner, TLPI Victim Advocacy Legal Specialist

Suzanne Garcia, TLPI Tribal Legal Specialist

David Rogers, Tribal Public Safety Innovations

10:00AM – 11:00 AM Emerging Strategy #1: California and Training for State Law Enforcement

Jennifer Walter, Former Staff, CA Tribal Court-

State Court Forum, Consultant

Justice Dennis Perluss, California Tribal Court-State

Court Forum Co-Chair

Judge Richard Blake, Hoopa

Sheriff Thomas Allman, Mendocino County

Olin Jones, Former Native American Affairs Office,

CA Department of Justice

Ann Gilmour, Attorney, Center for Families,

Children & the Courts, Judicial Council of CA

11:00AM -11:15AM	BREAK
11:15AM-12:15PM	Emerging Strategy #2: Pascua Yaqui and the Tribal Access Program <i>Oscar J. Flores, Chief Prosecutor, Pascua Yaqui Tribe</i> <i>Fred Lomayesva, Assistant Attorney General, Pascua Yaqui Tribe</i>
12:15- – 1:30PM	Lunch on Your Own
1:30PM-2:30 PM	Emerging Strategy #3: Sandoval County, NM and Agreements <i>DeLeana Otherbull, Executive Director, Coalition to STOP Violence Against Native Women</i> <i>Patricia Gallindo, Senior Attorney, Administrative Office of the Courts, New Mexico</i> <i>Judge Randolph Collins, Pueblo of Acoma</i>
2:30PM-3:30PM	Emerging Strategy #4: Michigan Judicial Relationships <i>Judge Melissa Pope, Nottawaseppi Huron Band of the Pottawtomi</i> <i>Judge Angela Sherigan, River Band of Ottawa Indians</i> <i>Judge Sue Dobrich, Cass County</i> <i>Judge Terrance Joseph Ackert, Trent County</i>
3:30PM– 3:45PM	BREAK
3:45PM-5:00PM	Wrap Up and Next Steps

Appendix C: Participant List

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Appendix D: Author Biographies



Jennifer Walter served as the supervising attorney for the California Judicial Council Center for Families, Children & the Courts, Tribal/State Programs Unit. One of her responsibilities was serving as lead counsel to the California Tribal Court State Court Forum, a statewide coalition of tribal and state court judges, appointed by the California Chief Justice and Tribal Leaders to identify issues concerning the working relationships between tribal and state courts in California. Ms. Walter has served in other capacities at the staff agency for the Judicial Council, including supervisor of the following programs: Court Appointed Special Advocate and other juvenile programs

and counsel to the Family and Juvenile Law Advisory Committee. Before joining the staff agency for the Judicial Council in 1995, she was directing attorney of Legal Advocates for Children and Youth in San Jose, a nonprofit law office, providing direct services using teams of attorneys and social workers. After graduating from the University of San Francisco School of Law in 1988, Ms. Walter became staff attorney at Legal Services for Children in San Francisco. Before becoming an attorney, she ran two programs in the New York City public schools, one for high school drop-outs and another aimed at increasing S.A.T. scores and college admission rates. Ms. Walter was admitted to the California State Bar in 1988 and received her bachelor's degree in linguistics from the University of California at Berkeley in 1982. Ms. Walter is a commissioner on the San Mateo County LGBTQ Commission. Ms. Walter lives with her wife, Deb Hedger, and their daughter in Half Moon Bay, California.



Heather Valdez Freedman serves as the Tribal Law and Policy Institute's Deputy Director, providing oversight for programmatic operations, as well as overseeing TLPI's tribal-state collaboration work. Heather has been with TLPI since 2006 and has over 15 years of experience working on policy issues in Indian country, with a focus on tribal criminal justice systems. She received her master's degree in public policy from the Kennedy School of Government at Harvard, where her focus was criminal justice policy in

Indian country. She also holds a master's degree in American Indian studies from UCLA. She has researched and written in the areas of tribal legal and community development and California tribal history. Her experience includes serving as project director for several research-related projects in Indian country, including the UCLA Native Nations Law and Policy Center's nationwide assessment of Public Law 280, tribal liaison for tribal court grantees in California, and consultant for the Gabrieleno/Tongva tribal recognition project. She is an instructor for the UCLA Tribal Learning Community and Educational Exchange and the series co-editor of the Tribal Legal Studies textbook series.