2012 Tribal Victim Safety Roundtable:

Responding to Sexual Violence Against Native Victims

EXECUTIVE SUMMARY AND REPORT

AUTHOR
Michelle Rivard Parks
Associate Director, Tribal Judicial Institute
School of Law
University of North Dakota
In 2011 the North Dakota Department of Health received a grant from the Office on Violence Against Women through the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program. The Rural Crime and Justice Center at Minot State University was designated as the agency that would administer the grant. Building upon a partnership, which began in 2005, the Rural Crime and Justice Center partnered with the Tribal Judicial Institute at the University of North Dakota School of Law to strengthen the connectivity among tribal and state courts and law enforcement.

In an effort to strengthen cross-jurisdictional efforts and to ultimately improve the responses to domestic violence and more particularly, sexual assault against Native Women, the nation’s most vulnerable population, the Tribal Judicial Institute coordinated the a roundtable discussion as means of introducing the benefits of having a sexual assault policy, identifying gaps in services to Native American sexual assault victims, to elicit recommendations from practitioners in the field, and to further strategize on best practices.

Note: A similar process was employed in December of 2007 by the TJI to discuss domestic violence resulting in a discussion group report and findings which can be downloaded from the Tribal Judicial Institute website located at http://law.und.edu/_files/docs/tji/docs/gtea-final-report-08.pdf.
2012 Tribal Victim Safety Roundtable:

**Responding to Sexual Violence Against Native Victims**

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2012 TRIBAL VICTIM SAFETY ROUNDTABLE

BACKGROUND, PURPOSE AND OBJECTIVES

BACKGROUND

Native American Women are sexually assaulted at rates that more than triple those of other women in the United States.\(^1\) Even more troubling than the sheer number of incidents of sexual violence being perpetrated against Native Women is the fact that an estimated 70 percent of incidents involving sexual violence against Native Women go unreported.\(^2\) Furthermore, Native American women experiencing sexual violence are more likely to be victimized:

- By multiple offenders
- By an offender who is of a different race or ethnicity\(^3\)
- In a manner that results in physical injury
- In a public place
- In a manner involving the use of a weapon

There has been much speculation and discussion about the aforementioned epidemic that is sexual violence against Native American women, however conclusive data relating to underlying causes has yet to be formally reported. With such widespread sexual violence against this particular group of women it is essential that we at least attempt to identify underlying or contributing factors to these disproportionately high rates of sexual violence so that we can begin to develop justice system responses aimed at reducing these incidents. To do this we must not only consider factors within tribal communities but we must also consider cross-jurisdictional factors and issues. To effectuate changes we must identify and bridge systemic gaps in an effort to safeguard Native American Women.

As such, an overarching goal of this Roundtable was to identify some of the underlying contributing systemic factors with respect to sexual violence perpetrated against Native American women in the state of North Dakota, both on and off of reservations located within the state of North Dakota. In order to do this practitioners and service providers, with long-standing experience working with and for Native American victims of sexual violence, were invited to attend and share their experiences, to learn from one another and to make recommendations on how to bridge systemic gaps between on and off reservation justice system professionals and victim service providers.

PURPOSE

The 2012 Tribal Victim Safety Roundtable was the first of two roundtable discussions on topics related to sexual assault response and resources for Native Victims of sexual violence. The Roundtable provided a forum for victim advocates, tribal prosecutors, healthcare workers, law enforcement

\(^2\) Id.
\(^3\) BJS, National Crime Victim Survey (2000)
officials, and tribal justice system officials from the tribes in North Dakota to come together and discuss tribal justice challenges and opportunities with respect to justice system response to incidents of sexual violence against Native Women.

OBJECTIVE(S)

This first roundtable focused on criminal justice systems’ responses and resources prior to adjudication and as such tribal victim advocates, law enforcement officials, prosecutors and healthcare providers were strongly encouraged to attend. The comments obtained from tribal participants have been used to identify and prioritize issues that arise for victims of sexual violence. The participant comments have been used to develop this Executive Summary & Report which is intended to be utilized by tribal, state and non-profit service providers to identify unmet needs relating to Native American victims of sexual violence, improve victim safety and offender accountability and provide best practices for addressing identified issues.

PARTICIPATING TRIBES

There are five federally recognized tribes and one recognized Indian service area located within the geographical boundaries of the state of North Dakota including:

- Mandan, Hidatsa & Arikara Nations,
- Spirit Lake Tribe,
- Standing Rock Sioux Tribe,
- Sisseton Wahpeton Band of Oyate
- Turtle Mountain Band of Chippewa (invited but declined to participate)
- Trenton Indian Service Area.

Participants included a range of domestic violence and sexual assault direct service providers from the aforementioned tribal communities.
ROUNDTABLE OVERVIEW

The Tribal Judicial Institute, in conjunction with the Rural Crime and Justice Center, North Dakota Department of Health, and the First Nation’s Women’s Alliance, with the support of federal grant program dollars from the Office on Violence Against Women through its Grants to Encourage Arrest Program, invited service providers from the 5 federally recognized tribes in North Dakota and the Trenton Indian Service area to participate in the first of two roundtable discussions regarding sexual violence and assaults against Native women. The first roundtable, which was designed to focus on pre-adjudication responses to sexual violence, took place on September 27-28, 2012, in Grand Forks, N.D.

Because the focus of this first roundtable was to be on issues relating to pre-adjudication responses to sexual violence, tribes were invited to send teams of individuals who have experience working with or for Native American victims of sexual violence including representatives from the following disciplines: victim advocates, law enforcement, tribal prosecutors and healthcare providers who may be working with Native American victims of sexual violence in tribal communities. The Roundtable provided a forum for the aforementioned disciplines to come together and discuss:

- Tribal justice system challenges, resources and opportunities in serving Native American victims of sexual violence;
- Internal tribal justice system responses, protocols and procedures pertaining to sexual violence;
- Issues affecting Native American victims of sexual violence across jurisdictional boundaries; and
- Collaborative efforts to provide services and coordinate justice system responses across jurisdictional boundaries.

DESCRIPTION OF THE PROCESS

The Roundtable began with opening plenary sessions designed to introduce participants to the project partners and to inform them of the project goals and objectives. Additionally, plenary sessions were used to introduce participants to topics of regional and national concern that would later be discussed in smaller breakout groups. Introductory topics included:

- Introduction to Tribal Coalition services through the First Nation’s Women’s Alliance
- System Responses to Sexual Violence (including resources and collaboration)
- Cross-Jurisdictional Issues & Resources

For the smaller breakout groups, the Tribal Judicial Institute brought together experienced group facilitators to ask questions of participants and record discussion points. Participants were divided into two groups in a manner that ensured each tribe would be represented in each of the two groups. Once breakout groups were formed, participants were informed that the assigned group facilitator would ask a series of questions on pre-determined topics and that scribes would record individual comments and group discussion. All recorded comments were projected on a screen at the front of the room to ensure that comments were accurate and to further ensure that participants were able to see
what was being recorded. Names were not recorded along with discussion points as the Tribal Judicial Institute wanted to encourage open and honest discussion. As topics or issues were introduced to participants and opened for discussion, participants were asked to not only identify problems, obstacles or challenges, they were also asked to provide recommendations in terms of solutions or best practices.

**TOPICS AND ISSUES DISCUSSED**

Group facilitators focused the discussions on several key issues relating to pre-adjudication responses to sexual assault namely:

- Coordinated Community Response;
- Advocacy & Direct Services available for sexual assault victims both on and off reservations;
- Law Enforcement policies and protocols for service providers working with Native women;
- Medical Services available to Native American victims of sexual assault;
- Accessibility to necessary records and data sharing;
- Collaboration with state-based initiatives relating to sexual assault crimes.

**DISCUSSION, SUMMARY AND RECOMMENDATIONS**

The discussion groups were designed to encourage participants to share information about existing programs, efforts, policies and procedures that have been developed to respond to sexual crimes against Native American women both on and off reservations in the state of North Dakota. Because many of the participants worked for programs providing services on reservations much of the discussion was focused on those efforts; however groups were also encouraged to discuss experiences across jurisdictional lines in order to identify systemic gaps in pre-adjudication services for Native American victims of sexual assault.

**TOPIC No. 1
SERVICES TO NATIVE AMERICAN VICTIMS OF SEXUAL ASSAULT/ VIOLENCE**

**A. Coordinated Community Response**

Participants all reported that there is some degree of a CCR within their tribal community that has been established to respond to sexual assault crimes (some coordinated community response teams have been implemented by federal authorities while others have been created and implemented entirely by participating tribal agencies). Some tribes report that the CCR has been established to address other crimes such as domestic violence and human trafficking in addition to sexual assault crimes. Two Tribes, namely Standing Rock and Three Affiliated Tribes have implemented SART teams to specifically respond to sexual assault crimes and also participate in Multi-Disciplinary Teams (MDT) coordinated by federal authorities. Standing Rock also reports that they have been working in collaboration with the Adult Abuse Resource Center located in Bismarck, ND, which has a CCR.
Issues Identified:
• No tribal participation in county or urban based CCR or SART teams, which is important to ensure there is culturally relevant advocacy for Native American victims.

Recommendations and Best Practices:
• Participants recommended that tribal service providers be invited to serve on county and/or urban CCR/ SART teams on a regular basis, or at the very least on a case-by-case basis.

B. Advocacy and Direct Services
All tribes report that direct services are currently provided for Native American victims of sexual assault/violence. Tribal advocacy and direct services programs are offering a variety of services to victims including, but not limited to, emergency shelter, food assistance, clothing assistance, court filing assistance, relocation assistance, household expense assistance and travel assistance. Tribal providers are also, to varying degrees, linking clients to mental and behavioral health services and in some instances providing culturally relevant counseling. Advocates also report that much of their work is crisis management and very little time remains for essential education that supports prevention.

Issues Identified:
• Often off reservation shelters are claiming the reservations as service areas but gaining access to emergency shelter for Native American women can be difficult.
• BIA victim specialist is to be providing services to all tribal areas in North Dakota but this is not occurring.
• Lack of housing and shelter, especially in regions impacted by oil development remain a problem in the provision of emergency shelter for victim services.

Recommendations and Best Practices:
• Off-reservation shelters need to provide services to clients within their service areas regardless of where the referral is coming from.
• Off-reservation shelters need to collaborate with on-reservation victim advocacy programs to provide relevant services to the communities they are serving.
• On-reservation safe houses or shelters are desperately needed. (Standing Rock does have an on-reservation shelter).
• On-reservation and culturally relevant support groups are desperately needed as many tribal communities are operating in crisis mode with little time to focus on healing and more importantly on prevention.
• The First Nation’s Women’s Alliance has a full resource directory of all tribal programs that is available to any on and off reservation service provider.

C. Medical Services for Native American Victims of Sexual Assault
Healthcare on reservations has been the subject of much debate for years. In terms of sexual assault response there is a degree of specialized training necessary on the part of medical care providers to ensure that quality patient care is being provided and that necessary information or evidence is not destroyed. Accessibility of trained SANE (Sexual Assault Nurse Examiners) remains a problem for Native American victims of sexual assault/violence and has a direct impact on the level of accountability through tribal and non-tribal justice systems.
**Issues Identified:**
- Off-reservation hospitals providing emergency medical care to Native American victims are often not receptive to Native American victims.
- There are on-reservation tribal healthcare clinics and agencies but they are only able to provide limited services to tribal members.
- Lack of sexual assault examinations being conducted (only routine clinical services)
- Accessing medical records prior to adjudication has proven to be difficult for most participants.
- Medical professionals rarely attend tribal court hearings to provide testimony (sometimes it is because of a historical refusal, other times they are simply not subpoenaed; SANE are more likely to come to court).

**Recommendations and Best Practices:**
- It is necessary to have trained medical providers to help provide medical services and conduct sexual assault examinations.
- Hospital Boards need to address quality patient care issues and also need to provide cultural competency education for staff.

**TOPIC No. 2**
**PROTOCOLS AND PROCEDURES**

This portion of the group discussions predominantly focused upon the existence of law enforcement protocols and procedures for reported sexual assault/violence incidents. Participants were asked to describe their current law enforcement responses and to identify whether such responses were part of an established protocol. Most participants report that there is no formally established protocols or procedures for law enforcement to follow in sexual assault cases. Participants were also asked whether the implementation of protocols and policies would be useful.

**Issues Identified:**
- Law enforcement shortages within tribal communities remain a major obstacle in terms of developing and implement protocols and procedures for responding to sexual assault incidents.

**Recommendations and Best Practices:**
- Cross-deputization was recommended to alleviate jurisdictional problems, responses to interracial crimes, and officer shortages (distance in rural areas significantly impacts response times).
- Participants generally indicated that the establishment of protocols and procedures would be helpful to ensure a consistent response.
- Most Tribes reported that a model tribal protocol and procedures would be more helpful than the state model policy as the applicable laws differ significantly from many tribal codes.
- Participants recommended that protocols, policies and procedures be developed as a multi-disciplinary document to help people understand the entire process and their specific responsibilities.
Participants recommended that such a document include a step-by-step procedure for law enforcement as well as a specific section to address officer-involved cases.

State one major change that you think needs to occur in the provision of law enforcement services to Native American victims of sexual assault:

- Tribal and state law enforcement need to receive more training on matters relating to sexual assault crimes and responses.
- Tribal and state law enforcement needs to be more sensitive and empathetic toward victims.
- Tribal and state law enforcement needs to stop victim blaming and focus on accountability of the offender.
- Tribal law enforcement needs to be able to charge non-enrolled members for any or all crimes against members.
- Tribal and state law enforcement units need to improve their response time.

TOPIC No. 3
COLLABORATION ACROSS JURISDICTIONAL LINES

Much of the discussion on this topic focused upon communication and collaboration across jurisdictional lines (tribe to state and tribe to tribe). Groups discussed concepts of collaboration including discussions that focused on how the tribes were working together and how tribal service providers were working in collaboration with off-reservation service providers. All participants report that they do not participate in any existing state, county or local sexual assault forums or response programs, with the exception of the Three Affiliated Tribes who do participate in a medical forensic committee. The general consensus of the larger group is that communication is lacking across tribal and state jurisdictional lines especially in terms of the provision of law enforcement services and medical services.

Issues Identified:
- Some tribes report positive relationships have been built with neighboring coalitions, however other report that such relationships are strained or virtually non-existent. In this regard consistency in cross-jurisdictional relationships remains an issue.
- Rape kits are being sent to federal crime lab and delays in processing is causing problems
- The provision of off-reservation medical services to Native American victims has been problematic due to misconceptions held by medical providers that victims were seeking prescription drugs.
- Several Native American victims have reported that they do not feel welcome in off-reservation shelters and are often encouraged by staff to leave the shelters. Victims have also reported that they have been alienated while staying in shelters (ie. Staff ignoring them).
• There is little coordination of services or collaboration between off reservation shelters and reservation-based victim advocacy programs despite many referrals being made by on-reservation providers.
• There is little understanding of agency resources between on-reservation and off-reservation victim service agencies and programs.
• Prejudices within many rural North Dakota communities compound issues of non-reporting especially when a Native American woman is victimized off the reservation. Some Native American victims have reported that state or county law enforcement officials were openly hostile to them. (note: this was not reported in all jurisdictions).
• Many Native American victims have reported that when they have sought assistance from off-reservation service providers they are referred back to their reservation even though they may be living off the reservation.

Recommendations and Best Practices:
• Creation of a comprehensive list of on-reservation and off-reservation service providers, points of contact and services would be helpful to link Native American victims to comprehensive services. (It is recommended that such a resource be web-based).
• Racial diversification in state and county law enforcement is necessary to promote cultural understanding and effective provision of services.
• There needs to be follow through and accountability within service based agencies in terms of cultural competency.
• Specialized domestic violence or sexual violence courts could be helpful to improving justice system responses.
• North Dakota STOP program is not proving to be effective in large part due to the fact that the funding involves very small amounts of money but the reporting requirements are very voluminous. Additionally, restrictions upon the use of these funds impact the benefits to the victims. It is therefore recommended that the N.D. Department of Health reevaluate this funding stream to alleviate some of these issues and make this a viable funding stream.

State one major change that you think needs to occur to improve tribal/state collaboration in terms of services to Native American victims of sexual assault:
• Need to have more tribal representatives serving on off-reservation boards and committees that impact services to Native American victims of sexual violence.
• Need more meetings between on-reservation service providers and off-reservation service providers to improve working relationships and get different ideas.
• We need to look at everyone as equal citizens to improve the lines of communication and collaboration.
• Need more formal gatherings to exchange ideas.
• Need cultural training for service providers.
• Need a state/tribal summit for all providers to come together in a collaborative way and to focus on team building.
2012 Tribal Victim Safety Roundtable:

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APPENDIX

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Tribal Judicial Institute
Tribal Victim Safety Roundtable:  
"Responding to Sexual Violence Against Native Victims"  

EVALUATION SUMMARY

Please rate the following on the following scale:  
1 = not satisfied  2 = somewhat satisfied  3 = very satisfied

Overall, how would you rate this Gathering?  
[ ] 1  [ ] 2  [X] 3  100%

How satisfied were you with the subject content of this Gathering?  
[ ] 1  [ ] 2  [X] 3  100%

How satisfied were you with the presenter(s) of this Gathering?  
[ ] 1  [ ] 2  [X] 3  100%

How satisfied were you with the facilitator(s) of this Gathering?  
[ ] 1  [ ] 2  [X] 3  100%

Were there any questions, issues or concepts you felt should have been included in the discussions at the Gathering that were not?  
[12%] Yes  [88%] No  
If yes, please describe:  Have all entities involved

Were the Discussion Groups structured in a way that you were able to make your comments and have them recorded?  
[100%] Yes  [ ] No

To what extent do you believe the information discussed during the Gathering will be useful in the future development of Victim Safety and/or Offender Accountability initiatives affecting tribal communities and members?  
- Very useful  
- Will be helpful in all upcoming grant projects  
- Hopefully communication & collaboration  
- Great ideas were thrown around to improve relationships  
- Once the right persons are contacts at the tribal level this shouldn't be a problem

Are there any comments that you would like to make part of the record that you did not make during the discussion groups?  
No, this was covered pretty well.

Additional Comments?  (use reverse side for additional comments if needed)  
- Thanks I enjoyed this!  
- This was one of the best roundtables that I have attended  
- Thank you for all the work you do for Indian Country and all women & children
Michelle Rivard Parks

Michelle Rivard Parks graduated, with distinction, from the University of North Dakota School of Law in 1999. Mrs. Parks is a licensed attorney in the state of Illinois, in the United States District Court for the District of North Dakota and in the Spirit Lake Tribal Court.

Mrs. Parks served as the Chief Prosecutor for the Spirit Lake Nation, a federally recognized tribe located in central North Dakota for approximately four years during which time she litigated a variety of criminal cases including domestic violence, sexual assault, assault and battery, substance abuse and other crimes. In 2001 Mrs. Parks was asked by the Spirit Lake Tribal Council to assist with larger legal issues facing the Tribe and has served as Tribal Attorney for the Spirit Lake Tribe since 2001. Additionally Mrs. Parks has served as an appointed member of the North Dakota Supreme Court State and Tribal Court Committee for more than eight years.

Mrs. Parks has a background in training and educating tribal, state and federal judges, attorneys, law enforcement officials, court staff and other individuals and entities on a variety of topics relating to the practice of both tribal law and federal Indian law. In the fall of 2003, Mrs. Parks joined the staff at the Tribal Judicial Institute, a training and technical assistance provider affiliated with the University of North Dakota School of Law. The Tribal Judicial Institute has been providing training and technical assistance on issues relating to domestic violence, tribal court development, sex offender management, various criminal justice issues and capacity building in conjunction with grants from the Bureau of Justice Assistance, Office of Victims of Crime, Sex Offender Monitoring and Apprehension Office, Office on Violence Against Women and the Bureau of Justice Assistance. In 2005 Mrs. Parks became the Associate Director of the Tribal Judicial Institute.

In addition to the foregoing, Mrs. Parks has extensive experience working with victim advocates and domestic violence service providers in the area of program development, domestic violence prosecution and the creation of a coordinated community response. Such efforts have included localized program development as well as participation in federally funded focus groups through the Office on Violence Against Women and the Office of Victims of Crime.

In the fall of 2003, Mrs. Parks joined the staff at the University of North Dakota School of Law as an Adjunct Professor teaching Federal Indian Law. Since 2003 Mrs. Parks has taught courses in Federal Indian Law, Tribal Law and Tribal Economic Development and the law.
Rebecca Ruzicka

Rebecca Ruzicka has been working as a Research Associate with the Rural Crime and Justice Center (RCJC) at Minot State University since the fall of 2003. Since working with the RCJC, Ms. Ruzicka has worked on several projects including: the Nationwide Rural Law Enforcement Study (NRALES); 2003 North Dakota STOP Grant; and the Grants to Encourage Arrest Program (GTEA) from 2004-2010. Ms. Ruzicka currently works as the Project Coordinator for the 2011-2013 GTEA project.

As part of the GTEA projects, Ms. Ruzicka assisted with the development of three model policies: North Dakota Model Law Enforcement Domestic Violence Policy; North Dakota Model Law Enforcement Involved Domestic Violence Policy; and North Dakota Law Enforcement Model Sexual Assault Policy. Ms. Ruzicka led the development of several surveys and evaluations that were administered to North Dakota law enforcement and domestic violence advocates. Rebecca earned her Bachelor of Science degree in Criminal Justice and Psychology from Minot State University, and is currently pursuing a Master’s degree in Criminal Justice.

Kelly Gaines Stoner

Ms. Stoner graduated from the University of Oklahoma College of Law in December 1988. Prof. Stoner was in private practice in Cherokee, Oklahoma, for several years prior to moving to New York in 1993. In New York, Ms. Stoner practiced for the Department of Human Services agency working on child abuse/neglect cases. In 1994, Ms. Stoner moved to North Dakota where she was an Instructor for the University of North Dakota Law School teaching Tribal Law and Domestic Violence related classes. For over eight years, Ms. Stoner directed the Native American Law Project that served clients of the Spirit Lake Reservation. Ms. Stoner’s caseload targeted domestic violence and sexual assault cases arising in Indian Country involving teen and adult victims. Ms. Stoner has experience prosecuting these cases in tribal court and representing victims in civil cases in tribal and state courts in North Dakota. In October 2011, Ms. Stoner was appointed as a Supreme Court Justice for the Seminole Nation of Oklahoma. Ms. Stoner trains regionally on the Indian Child Welfare Act.

For the past eleven years, Ms. Stoner has been the Director of the Native American Legal Resource Center at Oklahoma City University School of Law where she teaches in the areas of Indian Law, Tribal Law and Domestic Violence and speaks nationally on these topics. Ms. Stoner supervises several projects serving the needs of victims of domestic violence and sexual assault in rural counties in Oklahoma with a particular focus on representation of Native American victims. Ms. Stoner has experience representing victims of domestic violence and sexual assault in tribal, state and CFR courts in Oklahoma.

Linda Thompson

Linda Thompson is an enrolled member of the Bois Forte Band of Ojibwe, and she has lived on the Spirit Lake Reservation for the past fifteen years. She grew up in Minneapolis and spent most of her life around the Minneapolis / St. Paul metro area.

In 1995, Linda moved to Spirit Lake Reservation and worked with the Healthy Start Program. In 1997, she applied for the director position to develop a Victim Services Program for Spirit Lake. The Spirit Lake Victim Assistance Program was created and is still providing essential services to this day. The program has grown and developed into a respected organization providing services to all victims of crime, with a specialized focus on domestic violence and sexual assault. The program applied for membership with the North Dakota Council on Abused Women's Services. Spirit Lake Victim Assistance Program is also listed with the National Domestic Violence Hotline and RAINN. In 2007, Ms. Thompson and the other program directors of tribally based victim service programs founded a Tribal Domestic Violence/Sexual Assault Coalition, whose members include representation from the Turtle Mountains, Spirit Lake, Fort Berthold, Standing Rock, and Trenton Indian Service Area. The Tribal Coalition is a 501-c-3 nonprofit organization, with the mission of addressing domestic violence and sexual assault in Indian Country. Linda was hired to serve as Executive Director of the organization, which was named First Nations Women's Alliance (FNWA).

Linda also serves on the Board of Directors for the North Dakota Council on Abused Women's Services and on the Board of Directors for Safe Alternatives for Abused Families. She is a Board member of the local Indian Education Board for ISD#1 North Dakota. This past year included the appointment to the North Dakota STOP Advisory Committee, as a designee for Mr. Scott Davis (Director of Indian Affairs Commission) this is in agreement with the Governor's Office. Linda is committed to having a deep and lasting involvement on the state and national level, advocating for Native people and Native programs on critical issues in tribal communities, a role that is both challenging and rewarding.

Linda is committed to fostering collaboration among people, recognizing that human beings share an interconnection that is vital to creating peace in our homes, communities, and in the world.
# ORDER OF PROTECTION

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## Petitioner/Protected Person(s)

**Petitioner**

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## Respondent

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**Relationship to Petitioner/Protected Person:**

- [ ] Spouse
- [ ] Boyfriend/Girlfriend
- [ ] Family Member
- [ ] Household Member

**Respondent's Place of Residence:**

[enter address]

**CAUTION**

- [ ] Weapon Involved
- [ ] Weapon Present on Property

**Respondent Identifiers**

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THAT the Respondent has the following relationship with the Petitioner/ Protected person(s):

[ ] Spouse  [ ] Boyfriend/ Girlfriend  [ ] Family Member  [ ] Household Member
[ ] Other: __________________________________________

THAT the Respondent resides at: [enter Respondent's/Defendant's Address]
THAT the Respondent has acted in a manner that has caused the Petitioner to reasonably fear for his or her safety and well being or for the safety and well-being of named persons and as such represents a credible threat to the physical safety of the Petitioner and/or minor children of the Petitioner

THAT the Respondent [ ] did [ ] did not use or threaten to use a weapon.

ORDER

BASED UPON THE FOREGOING, THE COURT HEREBY ORDERS:

[ ] That the above named Respondent be restrained from committing further acts of abuse or threats of abuse;

[ ] That the above named Respondent be restrained from any direct or indirect contact with the Petitioner or named Protected Persons including harassment, stalking, intimidation;

[ ] The Respondent shall be required to surrender all firearms or other weapons to law enforcement and shall be prohibited from possessing firearms or other weapons until further order of the Court.

[ ] Additional terms of this order shall include:

This Order of Protection shall remain in effect until [ enter expiration date ] absent further order of the Court.

This Order shall be entitled to Full Faith and Credit and as such this order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U.S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262). Federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922(g)(8)). Only the rendering Tribal Court can change this order.

It is so Ordered this __________________________ day of __________________, 20 ___.

(Court Seal)

__________________________________________
(Judicial Signature)
Tribal Law Enforcement
Domestic Violence Response Policy

DRAFT Template

Produced by
The Tribal Judicial Institute
School of Law
University of North Dakota

Funding Provided by
The North Dakota Department of Health and Human Services and the North Dakota Coalition on Abused Women's Services through a grant from the Office on Violence Against Women, Washington, D.C., Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program (Fiscal Year 2008)
FOREWORD

This template was developed in response to recommendations made during a series of group discussions amongst tribal judges, tribal advocates, tribal law enforcement reps and some tribal leaders at a roundtable entitled “Tribal Victim Safety Initiative: Enhancing Services for the Protection of Native American Victims Across Jurisdictional Boundaries” that was hosted by the Tribal Judicial Institute in December of 2008. The comments captured during the roundtable discussions resulted in a number of key findings and recommendations being made on means to improve victim safety and offender accountability across state and tribal boundaries. Roundtable participants generally agreed that it would be beneficial for the tribes in attendance to have some consistency in the basic language of protection orders an in the policies and procedures that the various tribal law enforcement agencies followed in domestic violence cases.

There are several apparent complexities and challenges that were identified by the roundtable groups that would make the implementation of uniform or model policies or orders extremely difficult, namely issues of tribal sovereignty, the unique demographics and economic status of each of the tribes and the distinct societal, cultural and spiritual differences within each community. As an alternative to the development of “model” policies and orders, the recommendation was made to create a template protection order and template policy that set forth basic principles, procedures and policies while respecting tribal sovereignty by creating a mechanism for the tribes to incorporate their own unique provisions into the orders and policies that are actually implemented at the community level.

The purpose of this document, therefore, is to establish a template from which Tribes may opt to adapt a set of domestic violence policies for the law enforcement agencies within their communities. The intent is to provide a resource tool that would encourage a measure of consistency in the domestic violence law enforcement policies for each of the Tribes that choose to implement policies. It is through consistency that Native American victims can be better safeguarded both in and outside of their tribal communities and justice systems.
I. TEMPLATE POLICY STATEMENT

This policy acknowledges a need for the development and implementation of consistent procedures for handling matters of domestic violence within the (insert name of Tribe). The (insert name of Tribe) recognizes the seriousness of domestic violence and the damaging effects that domestic violence has within our community. The (insert name of Tribe) further acknowledges and recognizes that there are instances where police officers commit domestic violence against their intimate partners and that there are also some instances where some police officers are victims of domestic violence. This policy will provide valuable information and guidance to law enforcement officers and personnel when incidents of domestic violence are suspected or reported within the community or within the police department.

Beyond providing valuable information and guidance this policy sets forth valuable resources and tools that are to be implemented by (insert name of Tribe) Law Enforcement Agency when dealing with victims and offenders of domestic violence including incidents where law enforcement officers are directly involved in such incidents. The (insert name of Tribe) hereby states that equal access to the justice system is essential and the (insert name of Tribe) Law Enforcement Agency is hereby directed to provide a secure and confidential reporting process for victims as well as a timely response to reported incidents of domestic violence in accordance with the Domestic Violence Response Policies established by (insert name of Tribe).

It shall be the mission and policy of the (insert name of Tribe) to:

1. Prevent domestic violence through community education, cooperation with victim advocacy groups on the reservation, effective hiring and employment policies and self-reporting for law enforcement officers; and

2. Intervene in domestic violence situations through secure and confidential reporting, timely response and thorough investigations, and coordination with victim advocacy and service-based organizations.

The (insert name of Tribe) Law Enforcement Agency shall make every effort to collaborate with local domestic violence advocacy organizations. Whenever possible local domestic violence advocates shall be used as a training resource for law enforcement officers.

Additionally the (insert name of Tribe) recognizes that the Bureau of Indian Affairs (hereinafter “BIA”) Law Enforcement Division is required by law to uphold and enforce the laws and policies of the Tribe. Title 25 of the Code of Federal Regulations at §12.22 (2007) states that a “BIA officer will enforce tribal laws only with the permission of the tribe. Local programs are encouraged to make arrangements and agreements with local jurisdictions to facilitate law enforcement objectives.” The BIA does set minimum standards for conduct and policies, however the law is clear that BIA officers must follow the policies and standards of a tribe when there is a tribal contract or when tribal directives have been issued which do not conflict with existing federal law.
II. DEFINITIONS

**Ex Parte Protection Order** - A temporary order issued by a tribal or state court which restrains any person, Indian or non-Indian, from harassing, annoying, stalking, contacting, or coming within a certain proximity to another person issued by a court with jurisdiction over the person restrained and subject matter jurisdiction. The order shall also provide for an opportunity for a restrained person to be heard before the issuance of a permanent order of protection.

**Permanent Order of Protection** - An order issued by a tribal or state court which restrains any person, Indian or non-Indian, either permanently or for a specified period of time, from harassing, annoying, stalking, contacting, or coming within a certain proximity to another person issued by a court with jurisdiction over the person restrained and subject matter jurisdiction. The order may be the result of a civil protection order proceeding or the result of an order arising from a criminal prosecution against a person.

**Mutual Protection Order** - An order issued by a tribal or state court, which restrains both parties to a proceeding from harassing, annoying, stalking, contacting or coming within a certain proximity to another person(s). In order to be enforced by a court of this Tribe, a mutual protection order must be the result of both parties to a proceeding filing separate protection order petitions and the issuing Court finding that each of the persons to a mutual protection order have committed an act of domestic violence under the laws of the issuing jurisdiction.

**Issuing Court** - A tribal or state court that issues an ex parte or permanent order of protection against a person.

**Enforcing Court** - A tribal or state court that recognizes and enforces an ex parte or permanent order of protection against a person issued by another tribal or state court.

**Full Faith and Credit** - The act of enforcing an ex parte or permanent order of protection from another tribal or state court as if it were the order of the tribal court of the ________________ Tribe. In enforcing said order of protection, the enforcing court and its law enforcement agencies shall apply all laws and ordinances, including mandatory arrest for violations of protection orders, that the enforcing court has in existence at the time enforcement of the foreign protection is sought. Registration of the protection order is not a prerequisite to enforcement under this paragraph.

**Registration** - The act of filing a protection order issued by another tribal or state court with the tribal court of the ________________ Tribe or with the law enforcement agencies of the ________________.
III. DOMESTIC VIOLENCE

A. GENERAL INFORMATION

Domestic violence is legally defined by those behaviors contained within tribal law and order codes and other applicable laws. Not all behaviors associate with domestic violence are, in and of themselves, considered to be illegal and most tribal codes will set forth the legal definition of domestic violence. These legal definitions may include references to the relationship between the parties and the behaviors or actions that shall be deemed by the tribe to constitute domestic violence.

The dynamics of domestic violence are complex, however there are several key indicators that are included in domestic violence situations:

- Generally domestic violence occurs within the confines of an intimate relationship; and
- Generally there is a pattern of behaviors which include the assertion of power and control through destructive physical, emotional and psychological attaches.

B. LAW ENFORCEMENT-INVOLVED INCIDENTS OF DOMESTIC VIOLENCE

There are a number of special considerations that must be recognized and addressed when incidents of domestic violence involve law enforcement officer(s) or personnel including but not limited to:

- Pre-Hire screening for domestic violence, sexual assault, elder abuse, and child abuse;
- Post-Hire Review for incidents of domestic violence, sexual assault, elder abuse, and child abuse that may not have been disclosed or discovered during the pre-hire screening process;
- Post-Hire Intervention and investigation relating to post-hire incidents of domestic violence, sexual assault, elder abuse, and child abuse.

Actions must be taken by the Law Enforcement Agency to protect the victim, arrest the offender and proceed with both criminal and administrative investigations when an incident of domestic violence directly involves a law enforcement officer or employee. The Law Enforcement Agency shall have zero tolerance for acts of domestic violence committed by law enforcement officers or personnel. Should a law enforcement officer or agency personnel be convicted of criminal domestic violence they shall be immediately relieved of their employment with the (insert name of Tribe) Law Enforcement Agency.

Due to the nature of their employment with the (insert name of Tribe) Law Enforcement Agency, it is essential that all officers and personnel undergo a thorough criminal background check. Prospective employees should also be questioned about past allegations, court orders, arrests and/or convictions for domestic violence, sexual assault, elder abuse, or child abuse. Should a prospective or existing officer or employee have any such history it shall be the policy of the (insert name of Tribe) that the individual shall not be hired, or shall be immediately relieved from their duties if a finding of such incidents is made after an individual in the employ of the (insert name of Tribe) Law Enforcement Agency. Additionally it shall be made part of the orientation process that information shall be provided to the family of the officer or the employee that sets forth who to contact within the department if a problem occurs.
IV. INVESTIGATION AND PROSECUTION OF DOMESTIC VIOLENCE

The Department shall document all reported incidents of domestic violence, sexual assault, stalking, elder abuse and child abuse regardless of whether the reports involve and law enforcement officer of other law enforcement agency personnel. Incident reports shall be maintained which shall include the date and time of the reported incident, the names of any victims, offenders, and witnesses as well as the circumstances and action taken by the agency in response to the report. Should a report directly involve a law enforcement officer or agency personnel, a copy of the report shall be forwarded on to the officer or employees immediate supervisor.

A. GENERAL PROCEDURES AND PROTOCOLS

There is a need for consistency in law enforcement responses to reported incidents of domestic violence, sexual assault, stalking, elder abuse and child abuse. Basic and fundamental response measures shall include, but not be limited to:

Initial Response:
- When called to the scene of a reported incident of domestic violence, sexual assault, stalking, elder abuse or child abuse the law enforcement agency shall followed established protocol and procedures established to ensure the safety of the victim(s), the officer(s) and to ensure apprehension of the offender.
- The (insert name of Tribe) Law Enforcement agency shall make active efforts to ensure that law enforcement officers are trained on general domestic violence response procedures, the dynamics of domestic violence, tactics and behavior patterns and cross-jurisdictional policies and procedures. Officers shall also receive training on victims rights and safety, confidentiality and working with advocates.
- Safety of the victim(s) shall be of paramount concern. Officers shall work closely victim advocates to ensure victim safety and victim rights are maintained at all times. Officers shall be responsible for securing the scene of the crime, obtaining medical attention, and seek an arrest warrant if necessary.

Arrest Policies:
- The (insert name of Tribe) Law Enforcement Agency shall instruct officers to arrest the offender whenever there is probable cause to believe that a crime has been committed. The (insert name of Tribe) Law Enforcement Agency shall avoid dual arrests whenever possible.

Investigation:
- The (insert name of Tribe) Law Enforcement agency shall make every effort to protect and preserve the evidence from the crime scene through actual collection of physical evidence, photographic cataloging and by maintaining evidence in a secure environment so as to preserve the evidence for use in the prosecution's case. During the investigation process Law Enforcement shall conduct themselves in a professional and confidential manner and shall, where appropriate work with the victim advocacy program to ensure that victim(s) are receiving necessary information relating to the case.
B. LAW ENFORCEMENT INVOLVED INCIDENTS

Law enforcement officer and personnel are strongly encouraged to seek confidential assistance through their supervisor if they are being abused or if there are escalating behaviors or indicators within their relationship that they believe may evolve into criminal conduct if intervention does not occur.

Any reported incidents of domestic violence that directly involve a law enforcement officer or employee shall be investigated immediately and every effort shall be made to ensure victim safety and arrest of the offender. Upon arrest of any law enforcement officer or agency personnel, the individuals supervisor shall relive the accused of his/ her service weapon and all other firearms as required by applicable law(s). If a reported incident does not result in an arrest the responding officer shall submit a written report detailing why an arrest was not made or a warrant was not sought. All such incidents shall be thoroughly investigated and the reports and all evidence shall be timely forwarded to the prosecutor's office for processing. Further the victim shall be referred to the victim advocacy program.

Should the Chief of Police suspect or receive credible information that an officer or employee is directly engaged in domestic violence the Chief shall submit a report of the information to internal affairs for investigation and shall take appropriate administrative action against the officer or employee, which may include suspension or termination. The Chief of Police shall document all such incidents and shall place such documents into the officer or employees personnel file. Aggressive behaviors, inappropriate surveillance activities, unusual injuries, verbal disputes and other inappropriate behaviors and indicators shall be documented and may be actionable either criminally, administratively or both. Should an incident directly involve the Chief of Police, a report shall be made to the (insert name of Tribe) Tribal Council.

V. PROTECTION ORDERS

Under the Violence Against Women Act, a protection order is defined as:
“…any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to, another person.”

In some jurisdictions, a certification form is affixed to the order of protection verifying that it is a valid order of the court. However, under Federal law, a certification form is not required for the order of protection to be enforced. There is no requirement that the order or the signature of the issuing authority be original or that there be a raised seal or stamp of the court on the document. Additionally, there is no requirement in the Federal law that a victim must register the order of protection in the enforcing jurisdiction before that jurisdiction enforces the order.

Under Tribal Law the Protection Order must (insert language from Tribal Law and Order Code)

Basic Elements of a Valid Order of Protection:
Any order of protection should be presumed valid if all of the following are found:
- The order gives the names of the parties.
- The order contains the date the order was issued, which is prior to the date when enforcement is sought.
• If the order has an expiration date, the date of expiration has not occurred.
• The order specifies terms and conditions against the offender.
• The order contains the name of the issuing court.
• The order is signed by or on behalf of a judicial officer.

VI.
FULL FAITH AND CREDIT

In 1994, Congress enacted the Violence Against Women Act (VAWA) directing jurisdictions to give full faith and credit to valid orders of protection issued by other jurisdictions. 18 U.S.C. § 2265. Valid orders of protection must be enforced to protect victims of domestic violence wherever a violation of an order occurs, regardless of where the order was issued. Accordingly, when victims are granted orders of protection, law enforcement officers across the nation are required by law to protect them and to take all appropriate action against offender. Consequently an offender may be arrested and charged for violating an order wherever the offender violates a valid order. If an order of protection is valid in the issuing jurisdiction, it must be enforced in every other jurisdiction.

The Federal full faith and credit provision of VAWA applies to both criminal and civil orders of protection. Orders may vary in form, content, length, layout and names (i.e., stay away, restraining, criminal, and emergency or temporary protection order). Sometimes an order of protection will contain a mutual “no contact” provision or it will direct both parties not to abuse each other. The full faith and credit section of VAWA requires special safeguards for inter-jurisdictional enforcement of this type of order. Basically it states that an order should be enforced against the respondent (person against whom the order was issued) and not the petitioner unless the issuing court made a specific finding that each party had abused the other. If such findings were made, the order may be enforced against both parties.

A responding officer MUST ENFORCE the terms and conditions of the order as written. Officers are not required to know the laws of the issuing jurisdiction in order to enforce orders of protection. Officers in the enforcing jurisdiction must comply with all laws, policies, and procedures of their own jurisdiction concerning violation of orders of protection, such as mandatory arrest and victim notification, if applicable.

An order of protection issued in another jurisdiction is enforceable when: (1) the order appears to be valid; and (2) there is probable cause to believe that a violation of the order occurred in the enforcing jurisdiction.

The Issuing jurisdiction determines:
• Whether an order of protection should be issued;
• Who is to be protected;
• Terms and conditions of the order; and
• Duration of the order.
The **Enforcing jurisdiction** determines:

- How the order is enforced;
- Arrest authority of responding officer;
- Detention and notification procedures; and
- Crimes charged for violation of an order.

**Enforcement Action(s) to be taken by Law Enforcement**

If a law enforcement officer of the (insert name of Tribe) is presented with a protection order, either ex parte or permanent, or verifies the existence of such an order with the court or law enforcement of the issuing jurisdiction or by the oral statements made by the protected person under said protection, the officer shall enforce such order as if it had been entered by the Tribal Court. This shall include arresting a person violating such order without the necessity of a warrant, if the officer has probable cause to believe the person has violated the protection order, and taking all necessary steps to assure the protection of the protected person.

A responding officer must enforce the terms and conditions of the order as written by the issuing jurisdiction. The order of protection is presumed valid if it has the correct names of the parties, has not expired, and is signed by an issuing authority. It should be enforced pursuant to departmental policy and the laws of the enforcing jurisdiction.

When enforcing a valid Order of Protection, Law Enforcement Officers should:

- Identify whether an order of protection has been violated;
- Evaluate the validity and enforceability of the order;
- Arrest for violation of the order where required by the enforcing jurisdiction;
- Arrest for any other criminal offenses;
- Seek an arrest warrant, when required, related to the criminal conduct if the offender is not at the scene;
- Attempt to locate and arrest the offender;
- Safeguard the victim from further abuse;
- Secure and protect the crime scene;
- Seek voluntary surrender of firearms for safekeeping purposes;
- Seize firearms subjects to tribal, state or federal prohibitions.

If the named respondent committed an offense under the criminal laws in the officer’s jurisdiction and/or violated the court order, the officer should:

- Arrest respondent pursuant to the enforcing jurisdiction’s law and departmental policy; and
- Initiate criminal complaint against respondent for the crime(s) committed and for violation of the order.

**Firearms Seizure/Removal**

Federal law prohibits an offender subject to a qualifying order of protection from possessing firearms and ammunition. 18 U.S.C. 922 &sect; (g)(8). When an officer determines that a valid order of protection has been issued against an offender, the officer should enforce the firearms prohibition. Officers should be knowledgeable about their own jurisdiction’s law authorizing or precluding possession or transfer of weapons to third parties by a person subject to an order of protection.
If a qualifying order of protection has been issued, the officer should take possession of all weapons in the abuser’s possession through voluntary means or through application of Tribal, State, local, territorial and Federal laws.

VII.
RESOURCES AND AUTHORITIES


Model Tribal Domestic Violence Full Faith and Credit Ordinance
Full Faith and Credit Project
Publication Date: June 2000
http://www.vaw.umn.edu/documents/ffc/ffctribal/ffctribal.html#top

Full Faith and Credit Judge’s Bench Card
National Council of Juvenile and Family Court Judges
http://www.vaw.umn.edu/documents/judgefin/judgefin.html (This website is a cooperative project of Office on Violence Against Women and Minnesota Center Against Violence & Abuse at the University of Minnesota)

Tribal Court Benchbook for Domestic Violence Cases. Funded by the Violence Against Women Grants Office and produced by The Northwest Tribal Court Judges Association (1999)

North Dakota Model Law Enforcement Involved Domestic Violence Policy. Produced by NDCAWS in conjunction with the Grants To Encourage Arrest Programs Advisory Committee. (October 2005).

National Domestic Violence Hotline: (800) 799-SAFE, TTY (800) 787-3224
INTERAGENCY MEMORANDUM OF UNDERSTANDING

By and Between:

*Tribal Law Enforcement* (insert name)

And

*Tribal Advocacy Program* (insert name)

And

*Tribal Shelter Program* (insert name)

**PURPOSE**

The parties hereto share common goals of improving victim safety and offender accountability relating to incidents of domestic violence through consistency in response, interagency coordination and interagency communication.

In identifying a common focus, the aforementioned agencies have developed Tribal Law enforcement Domestic Violence policies that foster interagency communication and collaboration and which create a consistent protocol for first responders to incidents of domestic violence.

**OUTLINE OF PROPOSED ACTIVITIES**

The parties hereto shall participate in ongoing dialogue and training as it relates to domestic violence and correlating issues. The agencies further agree to actively engage and implementation the Tribal Law Enforcement Domestic Violence Policies incorporated herein by reference and attached to this MOU.

**ROLES AND RESPONSIBILITIES**

*Tribal Victim Advocates and Shelters:*

- Shall be responsible for providing copies of Law Enforcement DV policies to all existing personnel and to all newly hired personnel as part of the orientation process.
- Shall actively implement all provisions of the Tribal Law Enforcement Policies including those provisions relating to domestic violence response protocols and coordination of services with law enforcement
Law Enforcement:

- Shall be responsible for providing copies of Law Enforcement DV policies to all existing personnel and to all newly hired personnel as part of the orientation process.
- Shall actively implement all provisions of the Tribal Law Enforcement Policies including those provisions relating to domestic violence response protocols and coordination of services with victim advocates.
- Shall make every reasonable effort to preserve and provide all evidence in domestic violence incidents to the Tribal Prosecutors office in a timely manner.

The parties hereto further agree that should a dispute or concern arise the parties will make every reasonable effort to discuss and resolve the same in a manner that meets the needs of all parties hereto.

_________________________ Date: ________________________

Signatory

_________________________ Date: ________________________

Signatory

_________________________ Date: ________________________

Signatory