

# **Domestic Violence, Child Welfare and Supervised Visitation In Native American Communities**

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Domestic violence and the safety of women and children are difficult in normal circumstances in a non-Indian world. However, for Native women and children, seeking safety in domestic violence cases, child welfare cases, and supervised visitations is more challenging due to the substantially limited resources available to residents in “Indian country,” and substantial barriers to safety due to Native people’s political status and federal laws affecting reservation lands.

The purpose of this monograph is to explore barriers to ensuring safety for Native women and children, and is directed to the professionals working in social services and child welfare, legal services and courts, domestic violence advocacy, and law enforcement.

**Section I** provides a definition of Indian Country and the federal, state and tribal laws affecting jurisdiction over Indians and non-Indians, the legal impact of these complex laws on domestic violence enforcement in Indian country and with Native populations. This section provides an overview of the Indian Child Welfare Act, which deals with placement of Indian children in state removal cases.

**Section II** provides an overview of separation violence, the increased risk to women and children at the time they are trying to leave abusive relationships and the need for supervised visitation centers in Indian country.

**Section III** discusses some of the challenges in establishing and developing supervised visitation centers, in light of unique cultural considerations in domestic violence cases in Native American communities, and achieving cultural competency in a respectful manner.

**Section IV** discusses strategies for safety through federal, state, and tribal relationship building and mutual recognition of protective orders, custody, and child support orders through full faith and credit to ensure Native women and children receive the safety and help they need.

## I. Indian Country and Jurisdiction

There are over 560 Native Tribes, Nations, Pueblos, Rancherias, and Bands, in the United States.<sup>1</sup> Their individual forms of government are varied. Most Native American Communities have adopted governments with legislative, executive, and judicial branches, and formal constitutions formed under the Indian Reorganization Act,<sup>2</sup> while others have maintained traditional theocracies, in which religious leaders rule the community.<sup>3</sup> All tribes are subject to federal laws including the Indian Civil Rights Act, which provides constitutional-like protections to all persons for actions, both criminal and civil, arising in Indian country,<sup>4</sup> because the United States constitution does not apply to Tribes.<sup>5</sup> Despite the federal laws protecting the civil rights of Natives in their communities, a recent governmental report documents the United States' failure to provide resources to tribal courts and law enforcement to assist with crime in Indian Country.<sup>6</sup> In addition to a disparate amount of resources when compared to non-Native communities, there are limitations to the persons over whom tribal courts and tribal governments may exercise jurisdiction. Although the Bureau of Justice Statistics survey on crimes in Indian country showed Native women were 3.5 times more likely to be rape victims, 5 times more likely to be violent crime victims, and 70 % of the violent crimes against Native women were by non-Indians, tribal courts cannot exercise over non-Indians

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<sup>1</sup> Bureau of Indian Affairs. An Indian community or tribe is one which is "federally recognized," by the U.S. Government through the Department of Interior.

<sup>2</sup>Indian Reorganization Act of 1934, ch.576, 48 Stat. 362, 385 (codified at 25 U.S.C. §461-479), promoted tribal self government by allowing tribes to adopt their own constitutions, based on President Franklin Roosevelt's belief that the federal policy of autocratic rule over Indians was "incompatible with American Ideals of liberty." S.Rep. No. 1080, 73<sup>rd</sup> Cong., 2d Sess. 4 (1934)

<sup>3</sup>For example, Pueblo of Taos and Acoma, New Mexico, which do not have a tribal constitution, and the governor and Lt. Governor, is chosen annually to serve the community's best interests.

<sup>4</sup>Pub. L. No. 90-284, §§ 201-701, 82 Stat. 73, 77-81 (codified as 25 U.S.C. 1301 et.seq.)

<sup>5</sup>*Talton v. Mayes*, 163 U.S. 376 (1896) held that the federal constitutional Bill of Rights did not apply to Indian tribal governments or tribal courts.

<sup>6</sup>A *Quiet Crisis: Federal Funding and Unmet Needs in Indian Country* (U.S. Comm'n on Civil Rights 2003). The report indicates the average Indian community receives between 55-75% of the resources available compared to similarly situated non-Indian communities, and reports that the nearly \$60 million originally earmarked by Congress for tribal courts in 1993, through the Indian Tribal Justice Act, only 45 million was actually allocated through 1999. *Oliphant v. Suquamish*, 435 U.S. 191 (1978) Indian tribes and their courts have no criminal jurisdiction over non-Indians

who commit misdemeanor crimes of domestic violence in Indian Country.

Even though Congress has not passed a law vesting tribes with jurisdiction over non-Indian violent offenders who commit domestic violence against Native women in Indian country, it did pass a law which recognized a tribe's right to prosecute non-member Indians in tribal courts for misdemeanors.<sup>7</sup> The U.S. Supreme Court upheld the right of Congress to pass a law which allows both the tribes and U.S. attorneys in federal court to prosecute the same Indian offender in both courts, without violating the double jeopardy clause of the U.S. Constitution.<sup>8</sup> The authority of a tribal court to hear a crime or civil matter will depend on the race or political status of the offender or party, the location of the crime or occurrence, and whether federal law permits such exercise of jurisdiction. The maximum extent of tribal court jurisdiction over Indian crimes is limited by federal law to one year of jail, a \$5,000.00 fine, or both fine and jail.<sup>9</sup> Based on federal, State, and tribal laws, criminal jurisdiction in "Indian Country"<sup>10</sup> may be defined as follows:

- Indian against an Indian in Indian Country felonies (Major Crimes) - federal court and concurrent with tribal courts, 18 U.S.C. §1153.
- Indian against Indian in Indian Country Misdemeanors - Tribal court exclusive
- Indian against non-Indian felony in Indian Country - federal court and concurrent with tribal courts, 18 U.S.C. §1153.
- Indian against non-Indian misdemeanor - federal court and concurrent with tribal court, 18 U.S.C. §1152.
- Indian without victim - tribal court exclusive

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for misdemeanors occurring in Indian Country.

<sup>7</sup>25 U.S.C. §1301(2), Congress recognized and affirmed that each tribe has inherent power to prosecute non-member Indians, and the legislative history indicates this was Congress' intent.

<sup>8</sup>*U.S.v. Lara*, 541 U.S. \_\_\_, (2004), decided April 19, 2004.

<sup>9</sup>25 U.S.C. §1301, Indian Civil Rights Act.

<sup>10</sup>Defined as "all and within the rights of way of any Indian reservation including allotted land and rights of way, trust land, and all dependent Indian communities within the boundaries of the United States." 18 U.S.C. §1151.

- Non-Indian against Indian - federal exclusive 18 U.S.C. §1152
- Non-Indian against non-Indian in Indian Country - state exclusive
- Non-Indian without victim in Indian country - state exclusive
- Indian against anyone off Indian lands - exclusive state court jurisdiction

In addition to federal laws protecting Native women from domestic violence, many tribes have domestic violence codes which provide for mandatory arrest, although many tribes do not have jails, and must resort to use of state and federal detention at great cost to the tribe.<sup>11</sup> As a result of limited law enforcement resources and jails as a means to provide protection for women and children, tribal civil courts are often the more common forum in which to gain protective orders, custody, and visitation.

## **CIVIL JURISDICTION**

Although the U.S. Supreme Court has limited criminal jurisdiction exercised by tribal courts, civil jurisdiction is defined more broadly. The U.S. Supreme court decided that in most civil cases arising in Indian country, the tribal court is an appropriate forum.<sup>12</sup> In *Montana v. U.S.*, the U.S. Supreme Court announced that the inherent sovereign powers of a tribe not extend to non-members of a tribe, but that a tribe may regulate activities of non-members who enter consensual relationships with the tribe or its members, and a tribe can exercise civil authority over the conduct of non-Indians on fee lands within the reservation when the conduct threatens or has a direct effect on the political integrity, the economic security, or health and welfare of the tribe.<sup>13</sup>

Although, under *Oliphant* (discussed in the criminal section above), a tribal court cannot jail

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<sup>11</sup>A survey of various tribal codes and methods of enforcing domestic violence crimes with extensive bibliography is *Domestic Violence and Tribal Protection of Indigenous Women in the Untied States*, Gloria Valencia-Weber and Christine Zuni, 69 St. John's Law Review 69.

<sup>12</sup>*Williams v. Lee*, 358 U.S. 217 (1959) "Essentially, absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be governed by them." 358 U.S. at 220. This is the "infringement test" applied by the Supreme Court in most civil cases arising in Indian country in which the state court has attempted to act in contravention of tribal court authority to do so.

<sup>13</sup>450 U.S. 544 (1981).

a non-Indian who commits domestic violence against a Native women in Indian country, tribes and their courts can exercise civil authority over non-Indians who violate orders for protection. The Violence Against Women Act, although applicable between states and territories to permit the incarceration of a person who violates an order for protection, does not allow a tribe to jail a non-Indian who violates an order for protection in Indian country. However, the VAWA amendments of 2000 allow a tribal court to exercise all civil remedies to protect Native women and their children, including the power to exclude and remove non-Indians from Indian lands, along with any other civil remedy.<sup>14</sup>

Many Native women victims of domestic violence must resort to tribal civil courts and the general jurisdictional rules affecting the relief apply in non-Public Law 280 states (discussion below).

In the majority of states in which tribal and state courts become involved in domestic disputes, there are special rules to divorce jurisdiction as follows:

- Indian vs. Indian in Indian Country: tribal court exclusive
- Indian vs. Indian in non-Indian Country: State (but Tribal if code allows)
- Non-Indian vs. Indian in Indian Country: state probable, tribal concurrent
- Non-Indian vs. Indian in Non-Indian Country: State exclusive
- Indian v. Non-Indian in Indian Country: tribal exclusive
- Indian v. non-Indian in non-Indian Country: state exclusive
- Non-Indian v. Non-Indian anywhere: State exclusive.

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<sup>14</sup>Violence Against Women Act, 28 U.S.C. § 2260 and §2265 (“full faith and credit”).

## **PUBLIC LAW 280**

In several states, tribal courts have no authority to prosecute in criminal matters or in domestic violence crimes that occur within reservation boundaries. Tribal courts in these so called Public Law 280 states<sup>15</sup> would be limited to civil jurisdiction over matters such as Indian Child Welfare cases, domestic relations, regulatory offenses, such as hunting and fishing violations, and other civil disputes. What this may create are conflicting court orders between states and tribal orders. A state court may issue a temporary criminal custody order allowing a batterer limited contact with a child exposed to domestic violence, despite an order for protection between the parents, while a tribal court may issue a no contact and sole custody to the mother order in conflict. Advocates and workers should always inquire into the existence of tribal law or a tribal court for a certain tribe even if the tribe is located in a Public Law 280 state. As a practical matter, due to the rural nature of many Indian reservations, or in the case of Alaska Natives, communities may be so remote that it may be unfeasible to fly into a state district court for a criminal protective order when a civil order may be obtained by a Native woman in her local tribal court.

There are challenges for Native women where disputes arise both on and off- reservation. In a Public Law 280 state, the state court may issue a criminal order for an offense of domestic violence that occurs both on and off reservation, but may the state court may defer to the tribal court regarding its custody or divorce jurisdiction if both parents are residents or where one is a domiciliary or resident of the reservation. A Native woman may have to appear in both forums to ensure an appropriate custody or supervised visitation order is in place for her family's protection. Additionally, when attempting to serve persons on and off reservation with notice in custody proceedings may itself be a challenge. For example, where a cause of action arises off-reservation, but the Indian defendant resides on the reservation, if the state is a Public Law 280 state presumably the plaintiff can serve the Indian on the reservation pursuant to state process rules. However such

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<sup>15</sup>They are called such because of federal law of 1953, called public law 83-280, now codified at 25 U.S.C. §§ 1321-1326 and 25 USC § 1360, and 18 USC §1162. It was designed to cover a perceived lack of law enforcement and court systems on reservations in the 1950s. The law allows states the authority to decide criminal matters which arise on Indian reservations, and allows other states an option to assume such criminal authority over reservations. Minnesota, Wisconsin, California, Nebraska, Oregon, and Alaska are subject to public law 280.

attempted service may conflict with tribal law regarding appropriate means of service.<sup>16</sup> Such an action would seem to infringe on tribal sovereignty, especially if the tribal code regarding services was stricter than the state code.<sup>17</sup> Practitioners should be cautious that before a custody or supervised visitation order may be valid, proper service must be proven to the court. If service was improper, the entire order may be ineffective.

## **INDIAN CHILD WELFARE CASES: SPECIAL RULES**

The rules above apply to custody cases between biological parents in divorce custody and paternity actions. Different rules apply in child welfare cases involving removal from an Indian parent's custody occurring through the state. On numerous occasions, an Indian child may be removed from a mother's care for "failure to protect." Despite recent cases such as *Nicholson v. Williams*<sup>18</sup> and *Nicholson v. Scopetta*,<sup>19</sup> in which the entire New York Welfare System was criticized for removal of children from a woman for "failure to protect" simply because she was a victim of domestic violence, the norm for most states seems to be removal of children as a protective measure to stop domestic violence. This tendency to remove a child who is exposed to domestic violence is present in many Native American removal cases.

Despite the Indian Child Welfare Act's provisions designed to make it more difficult to remove children and terminate parental rights, many well meaning social workers continue to remove children from women who are victims of domestic violence for "failure to protect." The Indian Child Welfare Act<sup>20</sup> was enacted by Congress to prevent the unwarranted removal of Indian children from their homes at an alarmingly high percentage and placing them in non-Indian foster

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<sup>16</sup>Haynes, M.C., and Melvin, J.L., Tribal & State Court Reciprocity in the Establishment and Enforcement of Child Support, Child Support Project, Center for Children and the Law, American Bar Association, U.S. Dep't of Health and Human Services p.12, (1991).

<sup>17</sup>Lawrence, Service of Process and Execution of Judgments on Indian Reservations, 10 Amer. Ind.L.Rev. 257 (1982).

<sup>18</sup>203 F.Supp2d 153 (2001).

<sup>19</sup>344 F3d 154 (2d Cir. 2003).

<sup>20</sup>25 U.S.C. §1901 et seq. (1978).

homes.<sup>21</sup> Prior to its passage Senate hearings showed that between 1969 and 1974 25 to 35 percent of Indian children had been removed from their homes and placed into non-Indian adoptive families, the adoption rate of Indian children was eight times higher than that of non-Indians, and that approximately 90% of the Indian placements made by state courts were into non-Indian homes.<sup>22</sup> Congress declared:

*. . . it is the policy of this Nation to protect the best interests of Indian Children and to promote the stability and security of Indian Tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.*

The Indian Child Welfare Act (ICWA) provides that in foster care placement and pre-adoptive placement state court follow placement preferences to 1) a member of an Indian child's extended family, 2) a foster home licensed, approved, or specified by the child's tribe, 3) an Indian foster home licensed by a non-Indian agency, 4) an institution for children approved by an Indian tribe or by an Indian organization that would meet the child's needs, and in adoption cases the ICWA preferences are: 1) a member of the child's extended family, 2) other tribal members, 3) other Indian families.<sup>23</sup>

Quite often the practice of state agencies removing Indian children from their homes in domestic violence cases is based on cultural bias. Many victims of domestic violence have poverty status due to lack of education, job skills training, and may exhibit self medicating behaviors of drug and alcohol abuse to cope with their day to day trauma as victims. For these reasons, state workers continue to remove Indian children from their mother's homes for failure to protect, despite federal law to the contrary. The Bureau of Indian Affairs established guidelines for state courts, because oftentimes state courts were ignorant about unique cultural issues and child rearing practices of

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<sup>21</sup>25 U.S.C. §1901 ICWA, Congressional Findings.

<sup>22</sup>*Mississippi Band of Choctaw v. Holyfield*, 109 S.Ct 597, 1599 (1989)

<sup>23</sup>25 U.S.C. §1915.

Native communities.<sup>24</sup> Under the BIA guidelines, before a state court judge can order continued removal of an Indian child from his or her home, such evidence that continued custody is likely to result in serious emotional or physical damage to the child must be proven by clear and convincing evidence. The guidelines explicitly state:

*Evidence that only shows the existence of community or family poverty, crowded or inadequate housing, alcohol abuse or nonconforming social behavior does not constitute clear and convincing evidence.*<sup>25</sup>

The guidelines further stress the importance of state court judges in understanding the cultural context in which an Indian mother raises her child, and provides that a state court judges, in making a determination in child custody and placement of Indian children, make sound decisions based on qualified experts who are familiar with the tribal customs as they pertain to family organization and child rearing practices of a particular Tribe.<sup>26</sup> Additionally, state court judges, in making their decisions affecting Indian children, must rely on experts who have extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe.<sup>27</sup>

The BIA ICWA guidelines commentary notes: "Knowledge of tribal culture and child rearing practices will frequently be very valuable to the court. . .determining the likelihood of future harm frequently involves predicting future behaviors-which is likely influenced to a large degree by culture." However, many social workers fail to recognize domestic violence and hold the batterers accountable for exposing the children to violence. Mothers are more often than not held responsible not only for their own safety, but their child's as well. Where a social worker's concern may be for safety of the child, such focus may prevent the worker from characterizing the signs and dynamics of domestic violence, and the tendency may be for the worker to label the parent's relationship as one of "high conflict." Instead of holding a batterer accountable by court intervention to deal with his

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<sup>24</sup>44 Fed.Reg 67584-67595.

<sup>25</sup>BIA Guideline Sec. D.3.

<sup>26</sup>BIA Guidelines D.4.

<sup>27</sup>BIA Guidelines D.4.2

violence, the social worker loses focus that safety for the mother is safety for the child. The conflict may likely escalate resulting in further domestic violence, and the consequences are the mother is held accountable for the batterer's bad acts and punished for failure to protect her child by exposing him or her to domestic violence. This is a common pattern for many Native women and their children. These abuses against women by systems intended to help the victim and her children are often used against her because the batterers are not the focus of the child welfare worker.

Social workers should explore their own cultural biases to ensure the removal of Indian children from their mothers is not due to poverty, alcoholism, drug abuse, overcrowded conditions, or the fact they are domestic violence victims. Such workers should receive domestic violence training so they can remember that "safety for the mother is safety for the child."

## II. The Need for Family Services and Supervised Visitations in Domestic Violence Cases

### Separation Violence and the Need for Supervised Visitation Centers Generally

When I served as a commissioner on the American Bar Association on Domestic Violence, the commission adopted a policy that all attorneys should advocate for supervised visitations in all domestic violence cases. Below is a summary of the primary points made in the policy adopted in 2000.

More than half of the one to four million American women abused by intimate partners each year have children under the age of twelve,<sup>28</sup> and every year at least 3.3 million children are exposed to parental violence.<sup>29</sup> The impact of domestic violence on children is well documented. Immediate harm may include inadvertent physical injury,<sup>30</sup> intentional physical violence,<sup>31</sup> and sexual abuse.<sup>32</sup> The long-term consequences of childhood exposure to domestic violence range from delayed development<sup>33</sup> to behavioral and emotional problems.<sup>34</sup> In 1995, the U.S. Advisory Board on Child

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<sup>28</sup>Bureau of Justice Statistics Factbook, U.S. Dep't of Justice, Violence By Intimates v (NCJ-167237, March 1998); Bureau of Justice Statistics, U.S. Dep't, of Justice, Special Report: Violence Against Women: Estimates From the Redesigned Survey 3 (NCJ-154348, August 1995); American Psychologist Ass'n, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family 10 (1996); S. Rep. No 103-138, at 38 (1993).

<sup>29</sup>Jaffe, Wolfe, Wilson, Children of Battered Women, Sage Publications 19 (1990).

<sup>30</sup>Lee Bowker, Michelle Arbitell, & J. Richard McFerron, On the Relationship Between Wife Beating and Child Abuse, in Feminist Perspectives on Wife Abuse 158 - 162 (Kersti Yllö & Michelle Bograd eds., 1990).

<sup>31</sup>Lee Bowker, Michelle Arbitell, & J. Richard McFerron, On the Relationship Between Wife Beating and Child Abuse, in Feminist Perspectives on Wife Abuse 165 (Kersti Yllö & Michelle Bograd eds., 1990) American Psychol. Ass'n Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family 80 (1996) (40 - 60%); The Violence Against Women Act of 1990: Hearings of S. 2754 Before the Senate Comm. on the Judiciary, 101<sup>st</sup> Cong. (1990) (70%).

<sup>32</sup>Jan Osborn, Incest, in The Impact of Violence on the Family 82 (Dean Busby, ed., 1996) (Risk Factors associated with incest include an acceptance of male supremacy and an abusive family system).

<sup>33</sup>Hearings on Women and Violence, Committee on the Judiciary, U.S. Senate, Ten Facts About Violence Against Women 78 (August 29 & December 11, 1990).

<sup>34</sup>Substance Abuse and Mental Health Services Administration, U.S. Dep't of Health and Human Services, Substance Abuse Treatment and Domestic Violence 17 (DHHS Publication No. (SMA) 97-3163, 1997).

Abuse and Neglect cited domestic violence as the “single major precursor to child abuse and neglect fatalities in the United States.”<sup>35</sup>

Unfortunately, the children’s safety is not assured once the victim leaves the abuser, and unsupervised visitation poses a risk of continuing violence.<sup>36</sup> Abusers sometimes retaliate severely against victims who leave them, a phenomenon known as separation violence.<sup>37</sup> Retaliation may include heightened physical abuse, threatening or attempting to take custody of the children, abusing, stalking or harassing the victim and children, or abducting the children.

Consequently, when a victim attempts to leave an abusive relationship, courts should recognize that custody determinations are based upon the best interest of the child.<sup>38</sup> When drafting visitation orders, creating safety provisions that provide for continued and consistent protection during visitation and visitation exchanges is critical. Considering the safety of the custodial parent promotes the best interests of the children, and is crucial to their safety as well.

Research has shown that batterers are more likely to apply for custody and are equally likely to have it granted in comparison to non-violent fathers.<sup>39</sup> In addition, access to children can be abused by batterers in order to gain access to their former spouses. As part of an access agreement,

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<sup>35</sup>Howard Davidson, Professionals Working with Children, in *The Impact of Domestic Violence on Your Legal Practice: A Lawyer’s Handbook*, 5-20, (Goelman, Lehrman, Valente, eds., 1996) citing U.S. Dep’t of Health and Human Services, *A Nation’s Shame: Fatal Child Abuse and Neglect in the United States* (1995).

<sup>36</sup>The National Council of Juvenile and Family Court Judges found that “the propensity for continued violence remains after the divorce or separation and frequently recurs during unsupervised visitation or joint custody.” National Council of juvenile and Family Court Judges, *Family Violence Project*, 25.

<sup>37</sup>Bureau of Justice Statistics, U.S. Dep’t of Justice, *Special Report: Violence Against Women: Estimates from the Redesigned Survey 4 9NCJ-154348*, August 1995) (separated women were three times more likely than divorced women and 25 more likely than married women to be victimized by spouses.

<sup>38</sup>In 1990, Congress unanimously passed a resolution that “credible evidence of physical abuse of one’s spouse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive spouse.” H.R. Con. Res. 172, 101<sup>st</sup> Cong. (1990).

<sup>39</sup>Joan Zorza, How abused women can use the law to help protect their children. In E. Peled, P.G. Jaffe, & J. Edelson (eds) *Ending the Cycle of Violence: Community responses to children of battered women* (pp. 147-169) Thousand Oaks, Ca. Sage Publications (1996).

transitions from one parent to the other entail proximity that provides the opportunity for further abuse.<sup>40</sup>

### **Impact of Domestic Violence on Children**

Peter Jaffe, a psychologist, lecturer, scholar and author of numerous texts on children who are exposed to domestic violence pierces the misconception that as long as children are not abused directly, they are not harmed by exposure to domestic violence, while the reality is that such children “may suffer significant emotional and behavioral problems related to the traumatic experience.”<sup>41</sup>

*Research on children’s exposure to domestic violence has consistently identified a range of negative outcomes. Children who are exposed to domestic violence may show comparable levels of emotional and behavioral problems to children who were the direct victims of physical or sexual abuse.*

Jaffe writes that the impact of domestic violence exposure can be severe for children:

*In addition to emotional and behavioral problems, difficulties experienced by children witnesses can encompass a variety of trauma symptoms, including nightmares, flashbacks, hypervigilance, depression, and regression to earlier stages of development. Other identified difficulties include compromised social and academic development. . . . in adolescence, exposure to domestic violence is associated with drug and alcohol abuse, truancy, violent dating relationships, and involvement in the juvenile justice system. Exposure to domestic violence in childhood is also associated with significant problems in adult social adjustment.*

The impact of domestic violence is directly relevant to the determination of child custody by courts and court related services. Unfortunately, due to lack of training in domestic violence dynamics, most attorneys, family courts, and court related services fail to identify the needs of women victims and safety of children in the visitation setting.

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<sup>40</sup>Peter Jaffe, C. Crook, S. Poisson, *Common Misconceptions in Addressing Domestic Violence in Child Custody Disputes*, *Juvenile and Family Court Journal*, Vol. 54, No.4, Fall 2003.

<sup>41</sup>*Id.* At p. 60.

In 1994, the National Council of Juvenile and Family Court Judges adopted a Model Code on Domestic and Family Violence, which contain provisions pertinent to safe visitations. With ongoing risks to abused women and children being so high at the point of separation, supervised visitation centers have become an essential domestic violence service.<sup>42</sup> Section 405 of the Model code states:

- 1. A court may award visitation by a parent who committed domestic or family violence only if the courts finds that adequate provision for the safety of the child and the parent who is a victim of domestic or family violence can be made.*
- 2. In a visitation order, a court may:*
  - (a) Order an exchange of a child to occur in a protected setting.*
  - (b) Order visitation supervised by another person or agency.*
  - (c) Order the perpetrator of domestic or family violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or other designate counseling as a condition of the visitation*
  - (d) Order the perpetrator of domestic or family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours preceding the visitation.*
  - (e) Order the perpetrator of domestic or family violence to pay a fee to defray the costs of supervised visitation.*
  - (f) Prohibit overnight visitation*
  - (g) Require a bond from the perpetrator of domestic or family violence for the return and safety of the child.*
  - (h) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of domestic or family violence, or other family or household member.*
- 3. Whether or not visitation is allowed, the court may order the address of the child and the victim to be kept confidential.*
- 4. The court may refer but shall not order an adult who is a victim of domestic or family violence to attend counseling relating to the victim's status or behavior as a victim, individually or with the perpetrator of domestic or family violence as a condition of receiving custody of a child or as a condition of visitation.*
- 5. If a court allows a family member or household member to supervise visitation, the court shall establish conditions to be followed during visitation.*

Advocacy programs should provide courts with a copy of the model code to guide courts in addressing the safety risks child visitation poses to domestic violence victims and their children.

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<sup>42</sup>Sheeran, M. and Hampton, S., Supervised Visitation in Cases of Domestic Violence, Juvenile and Family Court Journal, Vol. 50, pp. 13-25 (1999).

Courts can enhance safety by inquiring about domestic violence when making visitation determinations in custody matters, and by crafting safety orders that establish very specific times, dates, and places for visitation and visitation exchanges whenever such contacts pose a safety risk to a parent or child. Judges, attorneys, guardians ad litem, child advocates, social service workers, domestic violence advocates, law enforcement, and most importantly, visitation center staff personnel must become educated about the increased risks inherent in visitations when domestic violence is a factor. The establishment of supervised visitation centers in Indian Country is a new concept. There are only a handful of current Native programs funded through the Department of Justice Violence Against Women Office in recent years. Numerous papers and treatises have focused on the development of such centers in non-Native communities, but there is sparse research related to special considerations and cultural challenges in developing such centers in Native Communities. Below is an overview of some cultural considerations for those who intend to develop supervised visitation centers in Native Communities.

### **III. Cultural Considerations and Visitation Centers in Native American Communities**

In their article *Reactions by Native American Parents to Child Protection Agencies: Cultural and Community Factors*, co-authors Horejsi, Heavy Runner Craig, and Pablo, articulate the cultural factors and barriers which prevent Native American access to child protection agency services.<sup>43</sup> The *Reactions* article primarily addresses challenges of social workers working in Native Communities. Below is a summary of their article with additional comments on supervised visitation centers and cultural challenges in Native Communities, with some suggestions in starting the work. This section attempts to answer the question: Are there special issues and challenges in developing supervised visitation centers in communities with culturally diverse populations?

In 1992, the Office of Human Development, US DHHS funded a study of why many Native American families fail to follow through on attending parenting classes and family counseling in child removal cases, by failing to comply with social services' active efforts to maintain the Indian family and prevent its break up. The study, published through the University of Montana, indicated a major problem with Native Families participating in tribal and state programs were the families being labeled as "uncooperative," "unmotivated", or "resistant." Many interrelated personality and situational factors give rise to the seemingly "hard to reach" behaviors.

Coordination of community service agencies to address child abuse and neglect in the late 1980s and domestic violence in the mid-1990s has brought about collaboration between traditionally diverse fields of practice, such as courts, advocates, and supervised visitation centers, to promote social change in the communities they serve. Although the federally funded supervised visitation and exchange programs are focused on divorce and custody cases in which there is domestic violence, courts and many human services and child protection agencies have been the primary contacts and workers in such community based programs. Below are some considerations that social workers, psychologists, psychiatrists, visitation center workers, attorneys, judges and advocates

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<sup>43</sup>Charles Horejsi, Ph.D, Bonnie Heavy Runner Craig, J.D., and Joe Pablo, B.A., *Child Welfare League of America*, Vol. LXXI, NO. 4, July- August 1992.

should consider when working with underserved populations to encourage the use of such centers.

### **Agencies as a Perceived Threat to Native Mothers and their Children**

Some Native American parents may be distrustful of the agencies developed to assist them with family safety. Some parents whom supervised visitation centers seek to help may have been removed from their own childhood homes, and therefore, may feel hostile and uncooperative with such supervision agencies. Others who may access such Safe Havens may flee to avoid agency intervention, and some women may feel distrustful of women's advocates or supervised visitation staff if they feel they are interfering with their parenting ability or their extended family relationships. A tribal member's values, beliefs and social norms may differ substantially from a non-Native worker's beliefs within an agency. Cross cultural clashes can occur between the parent and the child visitation agency, as well as with court advocates and victim's advocates and the parent. Additionally, a visitation center worker should clarify for a mother that such visitations are not a result of her actions, but rather, are prompted as a result of the batterer being held accountable for his abusive behavior and for the safety of her children.

### **Oppression**

The oppression suffered by Native Americans has so undermined their culture and their ability to parent that child abuse and neglect are frequent problems. The history of oppression seriously damages Native American's ability to accept help from child protective service agencies and staff members. Because many supervised visitation centers developed on reservations and other tribal lands are run by social workers, child protection agencies and social services staff, visitation center workers should realize how institutional and generational trauma affects Native women's ability to access supervised visitation centers in their communities. Some results of institutionalized oppression may include an inability to make decisions on one's own; this is based in a belief that a governmental agency will make a decision in her and her child's best interests. A Native woman's reluctance to access supervised visitation services may be further exacerbated by her self-blame for allowing the domestic violence to occur; she may allow the agency to take over, having grown accustomed to allowing others to make decisions for her and her child.

## **Social Factors**

Many factors shape a Native American's reaction to social services programs designed to assist Native families. Historical trauma shapes the attitude of Native Americans toward social services and court agencies, many of whom employ non-members and non-Native personnel. Poverty, health problems, substance abuse, discrimination, inadequate parenting skills, and psychological problems are all community factors which impact on how a Native family accesses resources within their communities.

## **Racism**

Many Natives Americans encounter racism and discrimination daily. Native children experience racism when they start school by being taught a dominant culture's values and taught to disregard their own. On the playground, a Native child may be called a drunken Indian, a wagon burner, and may be insulted with the infamous phrase "The only good Indian is a dead Indian." Such children may develop inferiority; they may avoid school and develop depression, alcohol and substance abuse, violence and other problems associated with low self esteem. Many of these children develop self-defeating or antisocial behaviors such as depression, suicidal tendencies, alcohol and substance abuse, and violence.

## **Personal Tragedy and Loss**

Personal experiences with racism and discrimination can give rise to a fear of social services agencies operated by non-Indian governments and tribal agencies run by non-members of the community. Suspicion by a strong tribal leader of such agencies may have a devastating impact on how well the entire Native community's views the agency and whether other members may seek help with such agencies. For instance, a Native mother whose aunt had her children removed from her care by a child protection worker from a state agency may be highly distrustful of the social worker's offer to supervise visitations, as the mother may fear a similar intervention by the agency. Many Native Americans are bonded or attached by blood, clan, marriage, or life time friendship, and such attachments that discourage use of agencies may outweigh an agency's attempt to help families. Family influences are powerful, and an agency worker must be able to address an entire family's

experience, rather than focusing only on the individual mother's experience, as her family's way of dealing with conflicts has probably shaped her thinking and reactions to systems and services.

### **Living in a Tribal Community**

Many women may be reluctant to access services in a small community where, through clan or family relationships, gossip and rumors abound. Knowing a member is using a social services program or supervised visitation center may label the individual accessing such services as part of a "problem" family in tight knit communities, and a woman's involvement with a community agency may actually cause shame and embarrassment from relatives who may have a strong belief and clan system requiring a family intervention or mediation. Her relatives may question why she ran to "outsiders" rather than using traditional or alternative dispute resolution systems. Despite numerous federal grants discouraging mediation and couples counseling, many tribes call such activities "traditional" problem solving forums, or "customary" practices, even although such activities may adversely affect a woman and child's safety. The trend of tribes adopting "sentencing circles," or "family interventions" and "family healing sessions," are in reality mediation and counseling services discouraged by OVW and DoJ as dangerous practices, yet more and more tribes are following such "healing" models as a means of addressing domestic violence. Supervised visitation workers should become familiar with such local practices of child rearing and parenting.

### **High Birth Rate - Young Parents**

The mean age of a Native American in the U.S. is 22 years, and the median age is 18. Native Americans experience the highest teen birth rate in America, along with problems of low self esteem, frequent use of alcohol and drugs, and high dropout rates from school. Oftentimes, the young parent may lack fundamental parenting skills, may have a fear of law enforcement and courts, and may be reluctant to discuss domestic violence or abuse of her children for fear of their removal. Young mothers may have a fear of complex organizations, governmental programs, laws, and agency procedures, due to misunderstanding the roles of the various agencies.

### **Effects of Alcoholism and Substance Abuse**

In 1989 Three Feathers Associates and the National Association for Native American Children of Alcoholism estimated that 95% of all Native Families living on reservations are affected directly or indirectly by alcoholism and substance abuse. Many children are products of two or three generations of alcoholic families and the pattern of dysfunctional behavior caused by the alcohol has been passed from one generation to another. Some of the impacts on such alcoholic families are to follow the three “rules” of living with an alcoholic, “don’t let yourself feel, don’t trust others, and don’t talk about your problems to outsiders.” Many young parents dealing with their own pain and conflicts are unable to focus on their children’s best interests and welfare. Visitation center workers should be vigilant regarding the ways in which these interrelated problems affect a parent’s decision making in addressing both her own and the child’s emotional needs.

### **The Reservation Experience**

Forced dependency on government authority gave rise to a sense of powerlessness and helplessness; Native Americans have grown accustomed to agencies making decisions for them. Out of habit or fear, many Native Americans simply follow recommendations of agencies and courts in a quiet resignation or passive defiance. Workers should be aware of such a decision making dynamic and allow persons accessing safe visitation centers some participation in decision making and explain an overview of their program to its intended users.

### **Extended Family Structures: Small Community Interactions**

More often than not, batterers want to have their own parents or extended family members supervise visitations. Section 405 of the Model Code provides several reasons why such supervised visitations by extended family should be discouraged. However, this safety issue intended to keep a child safe may challenge an entire Native American community’s child rearing practices and offend their sense of custom and tradition. This is a challenge for many non-Natives working in Native communities where, in many cases, the grandmother may be the default parent in the absence of either natural parent. These prevailing values in child rearing practices can be a challenge for advocates, attorneys, and judges who must try to explain to a mother, who has agreed to let the

children's paternal grandparents supervise visitations with the child's father, that such an arrangement may not be in the child's best interests. Sometimes the maternal grandparents may be willing to supervise the batterer's visits because of their extended contact with the grandchildren.

Sometimes, the woman's own family may create a barrier to her and the children's safety as the extended family may feel obligated to take a side and interfere with a parent's ability to parent. A parent may look to a powerful tribal member or relative who may attempt to influence the courts or agencies involved with the family. Workers should be aware of the family and community influences on women and their children which may run counter to the focus of the federally funded programs.

Workers in a Native community setting should reduce a parent's fear that the worker and the agency are trying to harm the children. Empowering mothers, who have experienced domestic violence and been unaware that systems may help rather than harm her family, is a first step in gaining trust and participation in supervised visitation centers. Center workers should be aware of the mother's parenting abilities, a father's ability and willingness to participate in batterer reeducation programs and parenting, and the extended family relationship to promote the mother's use of centers. Center workers should be aware of the impact extended family members have on issues related to child rearing, parenting, and community-based child rearing practices to promote the mother and children's safety.

Oftentimes, simply obtaining a history from the mother can alleviate many barriers a supervised visitation worker may have in gaining a woman's trust so she feels comfortable accessing the program's services. Being sensitive to a woman's history and her cultural background will educate workers so they can better explain in a respectful manner how she can promote her own identity, know her own relationships, and empower her within her community.

Workers should encourage women to use the vital resource of supervised visitation centers by respectfully offering (not ordering) access to culturally appropriate parenting training or counseling. The visitation center workers' focus should be on keeping her and her children safe, and holding

batterers accountable through recognizing the special challenges of cultural considerations to tailor a plan best suited to meet the Safe Haven's goals.

### **Developing Your Own Cultural Competency**

One of the few examples of how culture and domestic violence interact in legal settings can be found in *Cultural Considerations in Domestic Violence Case: A National Judges Benchbook: "Defining Culture and Achieving Competence"* by Sujata Warriar.<sup>44</sup> Below are an overview and an approach on gaining cultural competency in the work of building community relationships while developing supervised visitation centers.

Culture encompasses gender, ethnicity, national origin, tribal relationships, kinships, language, social orientation, sexual orientation, and spiritual beliefs. All of these factors form a woman's belief about domestic violence. The role of domestic violence advocacy is to keep women and children safe and to hold batterers accountable. The role of a supervised visitation worker is the same. Highly charged emotions in domestic violence cases are exacerbated by language barriers, and individuals' belief systems, including entrenched beliefs that one individual may control another, based on longstanding influences in one's society.

An historical definition of culture is a pattern of beliefs, attitudes and behaviors which are transmitted from generation to generation for the purpose of successfully adapting to society and the environment. A contemporary definition is that culture is the shared experiences or other commonalities of individuals based on factors of identification that have been developed in relation to changing social and political contexts, such as race, ethnicity, gender, sexuality, class, disability status, nationality, regionality, and language.

Cultural identity is how an individual defines oneself. It determines how one interacts with others; it dictates child rearing practices, courtship, gender-described behavior, etiquette, bodily adornment, mourning rituals, and one's sense of right and wrong. Most importantly, cultural identity

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<sup>44</sup>Maria D. Ramos, Esq., Author, Michael W. Runner, Esq., Editor, Family Violence Prevention Fund, 1999. Production was made possible by a grant from the State Justice Institute.

influences how others view the presence or absence of domestic violence.

The process of cultural competence is a journey in which a person learns to recognize and reject his or her preconceived notions and beliefs about a culture; it focuses on understanding information provided by individuals within the context at hand (e.g. witnesses, victims, children), and foregoes the temptation to classify or label persons with cultural misinformation.

The challenge for non-Natives working in Native communities in the area of domestic violence and visitation centers is challenging one's own general knowledge or pre-conceived notions, ideas, and beliefs about domestic violence. One must supplement such knowledge with specific information about the victim and others about their culture and about the factual questions regarding domestic violence to better serve the client. To achieve cultural competence one must develop an awareness of one's own biases or potential biases. When interacting with someone from a different culture one should ask several questions about their own beliefs: How did I obtain my beliefs? How do my beliefs affect my ability to treat a particular mother in a respectful manner, even though I may disagree with her belief system? Do my preconceived notions about a person's culture affect my ability to work with them?

Cultural misinformation can adversely affect a working relationship with domestic violence victims. There is a danger in stereotyping and a danger in using broad sweeping categories to characterize and define an individual's culture. Life experiences dictate how a particular woman may define herself, and in time of need, she may seek the comfort and belief that only her community and family of origin can provide. By understanding cultural misinformation, one can learn about the history of oppression experienced in a group. Misinformation also describes a particular survival strategy used by that group. It is historical information about a group that becomes misinformation when applied as a generalization to an individual, thereby limiting what we are able to see and understand about the individual. Cultural misinformation has often been used to justify mistreatment of individual group members by the dominant culture.

Sacred Circle, the National Resource Center to End Violence Against Native Women, publishes a guide for non-Natives who advocate for Native battered women and rape victims. Some considerations which non-Natives often fail to consider are cultural respect for the Native women whom they serve.<sup>45</sup> Carol Maicki, the primary author of the guide, provides insight for non-Natives to behave in a respectful manner:

*White people and other non-Natives have cultural quirks that are offensive to Native Women. Offensive is another word for impolite. Being aware of habits helps to minimize them so working with Native Women can be more productive for both. The following is not to judge because these traits are acceptable in the dominant culture. The intent is to point out behaviors that are not helpful when working with Native women.*

1. *Assuming that all Native women are the same.*
2. *Believing what works for the majority works for all.*
3. *Handshakes that are like corporate America.*
4. *Not allowing for silences.*
5. *Interrupting, talking over, talking too much and talking in a loud voice.*
6. *Assuming Native women are Christian.*
7. *Assuming Native women are NOT Christian.*
8. *Being directive, dogmatic, aggressive, or intrusive.*
9. *Criticizing mothering practices different from your own.*
10. *Saying “color doesn’t matter to me” or “some of my best friends are. . .”*
11. *Mistaking quietness for shyness, weakness or disability.*

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<sup>45</sup>Cultural Competency and Native Women, A Guide for Non-Natives who advocate for Battered Women and Rape Victims, A project of Cangleska, Inc., funded by the Administration for Children and Families, Office of Community Services, U.S. Dep’t of Health and Human Services.

## **IV. Strategies for Safety**

### **Indian Child Welfare: Culture and Extended Families**

In his article related to the Adoption and Safe Families Act and its intersection with the Indian Child Welfare Act, Judge William Thorne seeks a mutual respect between state and tribal jurisdiction affecting the rights of Indian children.<sup>46</sup> In the case of an Indian child, funding culturally appropriate services and delivering them promptly is an important part of providing active efforts to the child and family and increases the chance of an agreeable permanent outcome. Judge Thorne notes: “Remember that Native American families are much larger than mainstream families and include relatives beyond grandparents, aunts, uncles, and cousins.” This is a common trait shared by various communities of color. For example, kinship bonds in African and Native American families can mean that families rely heavily on extended families and friends for such tasks as child care, financial assistance, advice and emotional support.<sup>47</sup> Native American families that are used to customs like allowing grandparents to nurture and care for the children may not understand the risks of allowing an extended family member to be the supervisor of court ordered visitations because of their customary belief that such environments are safe for children, yet we are dealing with batterers who are not operating for that same belief system. Workers in communities of color will have a special challenge in convincing women who are reliant on their extended families that the center is somehow better equipped than those whom she trusts in her family. When interacting with Native women remember that trust has to be earned.

### **Full Faith and Credit, Violence Against Women Act, Orders for Protection, Custody, Supervised Visitation and Child Support Orders**

Women seeking help from supervised visitation centers are generally following court orders to do so. Children and women’s safety are enhanced when state and tribal courts, both civil and criminal, give reciprocity to and honor each other’s orders. Full faith and credit is

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<sup>46</sup> *Reconciling ASFA and ICWA*, Mimi Laver, Child Law Practice, Center for Law and Policy, Vol. 21 No.6.

<sup>47</sup> Dykeman, C, Nelson, J.R., Appleton, V. *Building Strong Alliances with American Indian Families* (1996).

generally established by statutes which command one jurisdiction to honor and acknowledge the orders or judgments of another jurisdiction, and treat such foreign orders as though they were their own. Comity is generally what tribes will give to foreign orders, and it is a permissive rather than mandatory process, in which a tribal court may recognize the authority of another court and give deference to the foreign order as a matter of courtesy. Whether full faith and credit or comity, women and their advocates should make sure a court order for custody and supervised visitation is valid both in the jurisdiction where the visits were ordered and also where the order is to be enforced.

The U.S. Constitution states that “full faith and credit shall be given in each state to the Public acts, Records, and judicial proceedings of every other state.”<sup>48</sup> The language of the Constitution specifies that “states” shall recognize each other’s orders, and Congress expanded the notion of full faith and credit to include territories and possessions through its full faith and credit statute.<sup>49</sup> Several states have interpreted the phrase to include tribal governments.<sup>50</sup> Others have enacted statutes for state courts to recognize tribal court orders.<sup>51</sup> When a woman obtains a tribal court order for supervised visitations but the visitation center is off-reservation, she and her advocate should get the district court where the center is located to give full faith and credit to the tribal court order. Such an action will prevent the batterer from obtaining his own state court custody order contrary to the tribal court order and prevent kidnapping

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<sup>48</sup>U.S. Const. Art. IV, §1, cl.1.

<sup>49</sup>28 U.S.C. § 1738.

<sup>50</sup>Jim v. CIT Financial Services Corp. 87 N.M. 362, 533 P.2d 751 (1975).

<sup>51</sup>S.D. Codified Laws Ann. §1-1-25 (1990)

The Indian Child Welfare Act contains a full faith and credit provision,<sup>52</sup> which provides:

*The United States, every state, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.*

The Violence Against Women Act's full faith and credit provision<sup>53</sup> provides that tribal court orders for protection "shall be accorded full faith and credit." When Congress validly commands, tribes and states must comply, even if the federal law contradicts existing tribal or state law.<sup>54</sup> Subsection 2265(e) was added in 2000 to deal with the authority of tribal courts to enforce orders of protection from other jurisdictions. Because of the *Oliphant* decision (discussed earlier) prohibiting the criminal prosecution of non-Indians who commit misdemeanor crimes on reservations, and due to the exclusive jurisdiction of the federal courts over crimes committed by non-Indians against Indians on reservation, VAWA 2000 allows only civil remedies for tribal courts, in the event of a violation of a protective order on reservation by a non-Indian. Section 2265(e) provides in pertinent part:

*Tribal court[s] shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion on violators from Indian lands, and other appropriate mechanisms arising within the authority of the Tribe.*

Congress may eventually expand VAWA to allow tribes to exercise jurisdiction over non-Indians who commit crimes on reservations, and the Supreme Court has recognized that Congress can alter the basic rules and expand tribal jurisdiction.<sup>55</sup> Sacred Circle has published a brochure to promote women's safety and it is an invaluable resource to women who wish to have their orders

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<sup>52</sup>ICWA 25 U.S.C. §1911.

<sup>53</sup>VAWA 18 USC §§ 2265-2266.

<sup>54</sup>Deer, S. And Tatum, M.L., Tribal Efforts to Comply with VAWA's Full Faith and Credit Requirements: A Response to Sandra Schmieder, Vol.39, No.2 , p.405, Tulsa L. Rev (2003).

<sup>55</sup>See *U.S. v. Lara* above, at ft.nt. 9.

for protection and custody orders honored throughout the U.S.<sup>56</sup> For a more extensive legal assessment regarding full faith and credit, Professor Melissa Tatum has written extensively in the area of full faith and credit between state and tribal courts related to domestic violence orders.<sup>57</sup> Mending the Sacred Hoop, the technical assistance provider for Indian Country STOP grantees, also has materials regarding assisting women to obtain orders to promote their safety on and off the reservation.<sup>58</sup>

### **Patience with Native Women**

As Carol Maicki notes:

*Native Women may present a greater challenge because of the intrusiveness of governmental and social agencies they've had to negotiate their entire life. Often, they are so accustomed to "agency" people telling them what to do it takes extra patience to help them find their own strength. She may not respond to questions immediately. Don't feel you have to keep talking, prompting and asking more questions. Silence is ok. She may just be thinking.*

Supervised visitation workers should be sensitive to a Native woman's needs, as well as to the children the center serves. What Native women's advocates have taught others who work with Native women is that respect and honor given to women victims will promote their trust in

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<sup>56</sup>Sacred Circle, the National Resource Center to End Violence Against Native Women," Enforcing Orders for Protection: What Every Native Woman Should Know About Full Faith and Credit."

<sup>57</sup>Tatum, M., *A Jurisdictional Quandary: Challenges Facing Tribal Governments in Implementing the Full Faith and Credit Provisions of the Violence Against Women Acts*, 90 Ky. L.J. 123 (2001-2002); *Establishing Penalties for Violations of Protection Orders: What Tribal Governments Need to Know*, 13 Kansas J.L. & Pub. Policy 123 (2003).

<sup>58</sup>Mending the Sacred Hoop TA project, Duluth Minnesota.

workers, and ultimately provide them greater access to agencies and places where they and their children may find safety.

## **SUMMARY: HOW TO MAKE SUPERVISED VISITATION CENTERS WORK IN NATIVE AMERICAN COMMUNITIES, HOW TO KEEP NATIVE WOMEN AND CHILDREN SAFE**

Federal laws complicate the enforcement of domestic violence laws to promote safety of women and children and hold batterers accountable in Native Communities. Lack of resources exacerbates the risks of separation violence and a victim and child's need for safety during visitations and exchanges. Non-Natives who attempt to help Native women through supervised visitation centers must explore their own biases and prejudices, to better serve Native women.

Meeting cultural challenges by becoming culturally competent is key in gaining the trust of Native women and convincing them to use supervised visitation centers and access services to promote their own and their children's safety. To better serve Native communities and other communities of color, center workers may wish to attend festivals, ceremonies, travel into the community, visit with cultural committees to learn about the tribe's history, customs, and traditions, become involved in community events, and ask questions in a non-threatening and respectful manner about the client's culture and beliefs, without being intrusive, and if the women are willing to share.

Center workers can provide community outreach programs and create working relationships with community members to involve them in coordinating and promoting access to the visitation center. Centers can sponsor a free training describing the safety goals of centers by training on the impact of domestic violence on children, and the purpose of the program's focus on safety for the child and mothers. Publishing brochures in the Native language and in English along with newspaper and local radio announcements will educate the community on what the center can provide. Hiring community members as workers at the center, developing a board of directors consisting of community members to reflect the population served should be another priority, so that community members become committed to support the center.

Knowing federal, state, and tribal laws regarding enforcement of custody orders and full faith and credit promotes the ability to follow court orders for visits accurately and ensure the safety of women and their children. Most importantly, knowing women and children's rights to be safe,

acting respectfully and humbly, and allowing the Native community to teach you will improve the chances women and their children will access your services for their own protection. These simple rules will help you fit in more easily, will allow you to more easily gain the trust of those whom you serve, and hopefully, will provide for Native women's and children's safety and well being.