



TRACKING AND MONITORING:

BUILDING A COORDINATED
COMMUNITY RESPONSE IN
NATIVE COMMUNITIES



MENDING THE SACRED HOOP
TECHNICAL ASSISTANCE PROJECT

**Tracking and Monitoring:
Building a Coordinated Community Response in Native
Communities**

*Mending the Sacred Hoop
Technical Assistance Project*

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TABLE OF CONTENTS

Acknowledgements	4
Section 1: Introduction	5
OVERVIEW OF THE MANUAL	5
PHILOSOPHY	7
HISTORICAL PERSPECTIVE	7
Section 2: Concepts of a Coordinated Community Response	10
ORIGIN AND PURPOSE FOR THE MULTI-DISCIPLINARY APPROACH	11
INITIAL ORGANIZATION	14
GOAL OF MONITORING SYSTEM	17
DEVELOPING A COORDINATED COMMUNITY RESPONSE	19
PRINCIPLES OF A COORDINATED COMMUNITY RESPONSE	20
STEP BY STEP GUIDE FOR CREATING A COMMUNITY BASED CCR GROUP	31
INTERVENTION CONSIDERATIONS IN RURAL AREAS	36
ADDITIONAL QUESTIONS	40
PRINCIPLES OF INTERVENTION	45
EIGHT ACTIVITIES OF INTERVENTION	47
BASIC INTERVENTIONS IN DOMESTIC VIOLENCE CASES	50
MODEL TRIBAL DOMESTIC VIOLENCE: FULL FAITH AND CREDIT ORDINANCE	52
SOLIDIFYING YOUR RELATIONSHIPS	55
DEVELOPING AN MOU	55
MEMORANDUM OF UNDERSTANDING EXAMPLE	57
DEVELOPMENT AND IMPLEMENTATION OF COOPERATIVE AGREEMENTS	63
Section 3: Practitioner and Participating Agency Roles	66
COORDINATED COMMUNITY RESPONSE CHART	68
THE ROLE OF RE-EDUCATION PROGRAMS	69
THE ROLE OF A MEN’S GROUP FACILITATOR	73
THE ROLE OF LAW ENFORCEMENT	75
THE ROLE OF CRIMINAL COURT	78
THE ROLE OF CIVIL AND FAMILY COURTS	79
THE ROLE OF PROSECUTORS	82
THE ROLE OF PROBATION	84
MANAGING OFFENDERS ON PROBATION	85
THE ROLE OF JAIL	87
THE ROLE OF AN ADVOCATE	88
PRINCIPLES OF ADVOCACY	90
THE ROLE OF TRIBAL LEADERS	92



Section 4: Monitoring and Tracking 93

BENEFITS OF THE TRACKING SYSTEM	94
MONITORING AND TRACKING QUESTIONS	96
CONCLUSION	99

Section 5: Resources—Examples for Discussion 100

TOPIC TO BE ADDRESSED:	COLLUSION	101
TOPIC TO BE ADDRESSED:	JUSTICE AND HEALING	105
TOPIC TO BE ADDRESSED:	RIGHT TO CONFIDENTIALITY	109
TOPIC TO BE ADDRESSED:	MEDIATION	113
TOPIC TO BE ADDRESSED:	LESBIAN BATTERING	117
TOPIC TO BE ADDRESSED:	DOMESTIC VIOLENCE SCENARIO	124
TOPIC TO BE ADDRESSED:	FULL FAITH AND CREDIT CASE SCENARIOS	128
TOPIC TO BE ADDRESSED:	ADVOCACY FOR NATIVE WOMEN	132
SAMPLE TRIBAL DOMESTIC CODE		135
COMMON TERMS		187



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Section 1: Introduction

Overview

This manual was created to specifically outline the process of building a Coordinated Community Response (CCR) in Native communities. A CCR, simply stated, is a monitoring and tracking system that establishes women's safety by focusing on batterers and their activity. This is done through a multi-agency collaboration with individuals dedicated to developing a response to domestic violence by implementing policies and practices to ensure batterer accountability. Each agency develops a role within this collaboration, ensuring a consistent response from law enforcement, prosecutors, judges and probation officers.

The many complex jurisdictional and legal issues that exist in Indian country make it difficult to pose a single organizing model that is relevant to all Native communities. This manual separates the creation of building a Coordinated Community Response into a framework for general use, suggesting ways to customize this practice to suit the needs of diverse communities. Each process is thoroughly explained and examples of programs that have created innovative strategies to suit the individual dynamics of their given community are provided. This manual also functions as a resource for revisiting the intent of your current coordinated community response. Change is inevitable; a CCR must maintain a certain amount of flexibility in order to accommodate changes in personnel and institutions as well as changes in the community and resources. A sustained, effective Coordinated Community Response must include examination, reflection and evaluation; these are key elements in measuring program success and identifying current trends. Additionally, program re-evaluation and review helps communities achieve the end goal of batterer accountability and woman safety. This manual is not intended to be a step-by-step guide to establishing a CCR,



but rather a resource that provides tools to more fully comprehend the concept, the questions to be asked and the relationships that must be established. Ultimately, a Coordinated Community Response must be tailored to fit the needs of the community it is serving; otherwise, it will fail in its purpose of holding offenders accountable and keeping women safe.



Philosophy

Domestic violence is deeply rooted in society on several levels. First, we must recognize that domestic violence is gender specific; statistics reveal that the majority of domestic violence cases involve male batterers and female victims.¹ Domestic violence in our society is predominately violence against women; this must be acknowledged and addressed in establishing an effective Coordinated Community Response.

Violence against women is a manifestation of sexism. It is not an individual pathology; it is a symptom of a society structured to maintain the privilege of certain people. This is further complicated in Native communities where the experience has been not only sexism, but racism and the erosion of sovereignty. Forced removal from ancestral lands, forced assimilation and the attempted eradication of traditional ways has a direct link to the quality of life Native Americans experience today, especially Native women.

Historical Perspective

Violence against women is not traditional in Native communities; it is a product of colonization. Many Native communities trace the onset of violence against women—domestic violence, sexual assault, and stalking—to the onset of European contact, oftentimes within one generation.² Women held a respected place in Native cultures, honored for their connection with the Earth, their ability to give life, to nurture, to lead, and for their contributions to the survival of the tribe. To harm a woman was to harm the community. Such behavior was unthinkable; if it occurred, it was dealt with strongly, often by banishment.

¹ Greenfield, Lawrence A. et al. *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, and Girlfriends*. Washington, D.C.: Bureau of Justice Statistics, U.S. Department of Justice.

² David, Eleanor. *Nin Gikenoo Amadimin: "We Teach Each Other" Training*. Duluth, MN. June, 2003.



European contact significantly changed the lives of indigenous people, resulting in the erosion of traditional beliefs and a change in the status of Native women. The values of traditional society were undermined by practices aimed at gaining control of the land and resources, exposing and imposing a value system foreign to Native societies—a value system that designated women as substandard citizens. The systematic destruction of Native cultures included a particular degradation of Native women. In many ways, the conquest of Native nations by Anglo-Europeans was accomplished by making war on Native women.³ By the mid-nineteenth century, United States policy makers and military commanders were stating that their objective was no less than the “complete extermination” of any Native people who resisted being dispossessed of their lands, subordinated to federal authority and assimilated into the colonizing culture.⁴ As Native societies were repeatedly exposed to the values of the colonizers, those values became internalized—eroding the traditional values of honor and respect for women. These values were replaced with the beliefs of colonizers: men have a right to certain entitlements in their relationships with women and they have the right to use force to maintain those entitlements.

Forced relocation, the massacre of women and children under flags of truce, forced removal of children to government run boarding schools and the imposition of cultural ways that go against Native values has created a deep mistrust of systems and agencies among Native people. Many Native women experience dominant culture institutions as aggressive and are hesitant to involve them in their lives. Quite often, battered Native women feel they are placing themselves at greater risk by seeking help. For instance, when leaving a violent relationship, instead of obtaining safety

³ Allen, Paula Gunn. *Violence and the American Indian Woman*. The Center for the Prevention of Sexual and Domestic Violence. Newsletter: Vol. 5:4: April 1985.

⁴ Ibid.



and shelter, a Native woman may find herself exposed to a situation in which she could lose her children to protective services.

The experience of institutions as agencies of re-victimization is one that must be kept in mind in the Coordinated Community Response. Additionally, we must be mindful that violence against women has been brought into Native culture through colonization. This is complicated by the fact that the systems response to that violence is also a dominant culture-based response. Can we address an epidemic introduced into our communities with a dominant culture response that was also introduced through colonization? In order to be effective, institutions must be relevant to the communities they serve. A Coordinated Community Response works to create that relevancy—creating institutional change through systems advocacy. It provides a way to examine institutions and monitor the cases that travel through them. The CCR works to assess: 1) Are offenders held accountable? 2) What are the strengths and weaknesses of the institutional response to violence against Native women? 3) Are women safe? Stopping the violence entails committing to community transformation. One way to do this is to build a Coordinated Community Response to violence against women that allows the community to change the institutional response to Native women who have been battered.





Section 2: Concepts of a Coordinated Community Response

A Coordinated Community Response (CCR) is a criminal justice intervention model developed to: 1) monitor system compliance with legal changes and 2) facilitate additional change to address developing domestic violence trends. This intervention and response to domestic violence must be consistent in holding offenders accountable while creating safety for women. Ultimately, a CCR works to create institutional change through systems advocacy. This requires understanding how institutions work and how they can be challenged to change current responses to provide safety for women and offender accountability. Challenging institutions to change must be done in a positive fashion that encourages their continued participation in the CCR. Frustrations with institutions and individuals have to be constantly put aside in order to sustain a CCR; hostile relationships cannot persist or the CCR will not be effective.

This section covers the origin and purpose of the CCR concept. Key issues are reviewed for maintaining safety for women by holding batterers accountable. While doing CCR intervention work, focus on the specifics of the intervention, of on-going training and consider the diversity of jurisdictions within the given community.



Origin and Purpose for the Multi-Disciplinary Approach

The concept of a Coordinated Community Response was developed in Duluth, MN in response to a case that greatly impacted the community and received a great deal of media attention. In 1978, a 19-year-old woman killed her husband. As the case was investigated, it was discovered that this young woman had been hospitalized eleven times for injuries inflicted by her husband and he had been convicted of child abuse twice, yet nothing had been done to help or protect her. In the midst of yet another violent incident, she killed him to keep herself and her children safe. Subsequently, this woman faced incarceration and the community was shocked. They began to ask themselves: Isn't there any responsibility on the part of the community to do something? Every part of the system failed this woman. How did that happen? Why wasn't there any intervention by the different systems she came into contact with? The public demanded change and established institutions were ready to try something new.

Legislation addressing domestic violence had recently passed in Minnesota and the Duluth Abuse Intervention Project (DAIP) was founded with the commitment to ensure changes were effectively implemented. Key elements of the legislation were civil protection orders and the probable cause arrest law. The civil protection order offered more immediate protection to battered women with provisions such as child custody and monetary support, in addition to prohibiting the abuser from having contact with the victim. The probable cause arrest law was instrumental in improving the criminal justice system's response. Police now had guidance in determining whether enough verbal or physical evidence existed to conclude a crime was committed and make an arrest.

In order to assess whether women's needs were being met by this new legislation, the Duluth Abuse Intervention Project (DAIP) began listening to the voices and perspectives of battered women using



the court system. DAIP started monitoring the court process, and for two years followed various people involved in the domestic violence response, from dispatch to law enforcement, focusing on how and why they responded as they did. This assessment is crucial to building a CCR; establishing relationships with various systems must be extended into examining and understanding why people do their work the way they do—often it is due to established protocol. Out of this process, the Coordinated Community Response was developed, with DAIP as the monitoring agency. Prior to the founding of DAIP, the groundwork for addressing violence against women had been laid by establishing shelters and working to criminalize domestic violence. DAIP’s Coordinated Community Response concentrated on the criminal justice response by focusing on offender accountability through institutions’ compliance with their own policies and procedures.

DAIP monitors all domestic violence cases, receiving copies of each police report and court case. Their follow-up is to meet observed needs with training and monthly meetings on current cases of domestic violence and the response trends of different agencies and departments. These monthly meetings are a time for various disciplines to get together to track various cases and batterers. Battered women are not the focus of these meetings. The focus is on offender accountability and woman safety through examining the systems response to domestic violence. DAIP then facilitates the policy-making process as well as protocol adjustment that would enhance or uphold the above goals.

A key element in developing an effective CCR is creating a monitoring agency, such as the DAIP, which is not part of the criminal justice system. This agency facilitates the process of examining policy and protocol, while keeping the vision of women’s safety and offender accountability at the forefront.



DAIP's CCR approach has been used in many urban, rural and tribal communities across the United States, gaining international recognition with its development in areas across Canada, Europe, and New Zealand. Communities use this model following a similar process, making adjustments to accommodate the distinctive circumstances of their community.

The objective of this section of the manual is to outline the process of bringing change to the criminal justice system's response to domestic violence. Some aspects may not be suitable or relevant to all communities. Successful CCR implementation depends on the critical thinking and problem-solving ability of involved individuals and their commitment to the intervention process. This commitment is a necessity for CCR survival. A lack of adequate services increases the danger for women experiencing violence in their relationships. Be careful not to follow a model program because of its success—a CCR must be relevant to the existing services in your community. Innovation is key and is developed through the problem-solving process, addressing varying and difficult circumstances. Support and involvement of community members is what makes a Coordinated Community Response work. An effective Coordinated Community Response changes the context of domestic violence, creating a response that says that domestic violence is not a private affair, it is an issue that affects the not only the wellness of Native women but the community as a whole. This approach then holds the community responsible for holding batterers accountable and stopping violence against Native women.



Initial Organization

The initial organization stage of a CCR requires someone outside of the system to build the monitoring agency or act as the CCR coordinator. This person must spend time learning about the policies, procedures and practices of all involved agencies in order to develop a full understanding of the task at hand. This point can be demonstrated by looking at mandatory arrest. Generally, a mandatory arrest policy states an arrest must be made if there is probable cause that a crime has been committed. Probable cause is defined in Black's Law Dictionary as “the existence of circumstances that would lead a reasonable and prudent person to believe in the guilt of the suspect.” This policy would be ineffective in domestic violence cases if well-written procedures did not accompany it. For example, probable cause policy without good procedure would create situations in which women who are battered could get arrested either solely or along with the batterer. This would be probable cause without recognition of self-defense and/or predominant aggressor.⁵ Effective procedure states how officers investigate domestic violence calls, identify a predominate aggressor and address mutual combat, dual arrests and non-arrests.

The monitoring agency must discover how each agency operates and what policies and procedures are in effect. This involves meeting with individual people in various agencies to learn what the actual practice is when following procedures. This is where individual attitudes and beliefs toward violence against women undermine the best policy. If there is a spirit of dissention behind the policy, the policy may proceed un-enforced. Individual people ensure policy is followed. By taking the time to follow the process, not only will the involved practitioners have a greater understanding of the workings of each agency, but this will also help lay the groundwork for building crucial inter-agency relationships.

⁵ As opposed to primary aggressor, which does not take patterns of violence or history of violence into account? See page 27 and *Glossary of Common Terms*.



CCR planning also includes cross training each CCR team member on the role and limitations of each participating agency. Most people interpret the world according to their own understanding; team members will tend to view domestic violence according to their profession or training. To create a broader understanding of the problem of domestic violence, each person on the CCR team should have a solid grasp of the perspective of each participating agency.

Making the effort to establish relationships among agencies and service providers results in building connections, establishing support, discovering allies, and creates dialogue that helps bring issues of violence against women to the forefront. Whether a CCR coordinator or a battered women's advocate performs the monitoring, making connections with key people in various agencies helps advocate for individual women in violent relationships. Having the support and understanding of various individuals and agencies increases the effectiveness of the work; allies may be found in unexpected areas. Overall, the time spent in communicating, learning and bringing people together from different professions creates an awareness of the problems the CCR is trying to address. It also encourages team members to think differently about how they approach and conduct their work.

Building a CCR team is not a finite experience, it is a continual process. It is often necessary to revisit certain areas of CCR building after the CCR team has been established in order to maintain a common focus. Cross-training, reviewing policies and procedures, sharing information on the dynamics of domestic violence and battered women's experiences will be necessary in order to bring other agencies into the CCR or to educate new people when an agency experiences a change in personnel.





Goal of a Monitoring System: Institutional Advocacy

When building a Coordinated Community Response to effect change within the criminal and civil justice system, the focus must be on institutional advocacy. This type of advocacy functions on behalf of battered women to ensure the justice system protects its citizens. Institutional advocacy also entails working within various institutions to find ways to improve the work currently being done. While members of the criminal and civil justice system may have a broad focus, addressing many types of crime and disputes, the monitoring agency must remain focused on aspects of violence against women at a policy level.

In contrast to institutional advocacy, individual advocacy requires working directly with women to help them obtain the services and protection they desire. This may involve assisting individual women in finding childcare, getting transportation to appointments, finding work and an apartment. It may also include assisting a woman in filing a protection/restraining order, accompanying her to court, helping her problem-solve and navigate through various institutions. In the main, individual advocacy focuses on directly assisting women with specific needs on a one-to-one basis. Advocates working individually with women contact various practitioners within the justice system to foster a better understanding of the particulars of a woman's story or experience. These advocates share the experiences of the many women going through the courts with practitioners so they may better identify where the system is lacking.

The work of both institutional and individual advocates is extremely valuable in providing safety for women in violent relationships. Some communities may not have the resources to designate one person an individual advocate and another person an institutional advocate. It is quite common for advocates working in such communities to work with individual women in addition to performing



institutional advocacy. The key to functioning in both roles lies in the advocate's ability to see common problems that exist for women using the courts rather than focusing on the specifics of individual cases. Institutional advocates must not compromise the safety and integrity of individual women in attempts to help the court system perform better. In either case, the voices and stories of women seeking help through the courts are critical to improving the overall response of the justice system and the community.

A Coordinated Community Response creates systems change through institutional advocacy; this change is achieved by building relationships, negotiating and staying committed to the process. Successful CCR teams involve individuals who are able to communicate and coordinate with various agencies as well as analyze information and problem-solve. This type of intervention requires continual effort to increase and maintain effectiveness. A CCR is a process of examination, reflection and evaluation that enables individuals to change ingrained institutions.



Developing a Coordinated Community Response

The basic purpose of a CCR is to keep institutions accountable to the community. A diversity of practitioners and individuals from the community come together to examine how institutions can change practices that are failing to meet safety needs or re-victimizing women by putting them in further jeopardy. This process involves holding offenders to a higher level of accountability through the sharing of information (such as the status of an offender and his location) especially in regards to a protection order. Ideally, the represented agencies on a CCR team are those who are involved at any point in the criminal proceeding: prosecutors, police officers, probation officers, battered women's advocates, shelter advocates and judges. By bringing systems people together with local service providers, the web of safety for women and accountability for perpetrators is strengthened.

When bridging the gaps between systems and community service providers, obstacles and tense moments often occur. Use these times to develop a greater understanding of differences and identify areas that need change. Everything, even conflict, is a part of the process. Systems change can be accomplished by incorporating a consistent method of identifying problem areas, gathering information, testing new ideas and evaluating changes.



Principles of a Coordinated Community Response⁶

- 1) Keep battered women at the forefront of your work.
- 2) Know the people and the work they perform.
- 3) Learn about the policies and procedures of each agency.
- 4) Form small working committees to create new methods of implementing procedures and policies.
- 5) Avoid taking on too many projects at a time.
- 6) Propose realistic and tangible changes that fit people's work.
- 7) Convince leaders and policy makers to try new ideas.
- 8) Test out ideas and make adjustments.
- 9) Organize trainings for practitioners on new procedures and policies.
- 10) Monitor practitioners' compliance with new procedures.
- 11) Work with administrators and department heads to reach high compliance.
- 12) Document the impact of those changes on case outcomes and women's safety.
- 13) Institutionalize a cohesive response.

Please note: These points are expanded upon in the following section.

⁶ Domestic Abuse Intervention Project. Duluth, MN.



1. Keep battered women at the forefront of your work.

Keeping battered women at the forefront of the work allows the most appropriate response to be formulated to meet their needs within the institutions they must navigate. The key to grassroots organizing is to include those most impacted by the problem—those who will benefit most from the changes made. It is instrumental to the work to examine and discuss how the system fails to protect women or address their needs with battered women and advocates. Advocates are great resources in creating a CCR; they usually work with both women and institutions and they see firsthand the common problems women face in seeking safety. Ideally, the monitoring agency or CCR coordinator will be outside of the system, unconnected to a particular institution. However, strong coordinated community responses have been created when a practitioner in the system becomes the driving force for change. In all cases, systems change will be of little benefit to battered women if the monitoring agency or coordinator doesn't communicate with and incorporate the voices and experiences of battered women and advocates.

Confidentiality must be the highest priority when gathering information that reveals details of a woman's situation, information that puts her at risk of backlash from her abuser or the system itself. Care and attention must be given to this issue so women's experiences are not exploited putting them in danger of further personal harm.

In order to address these and other issues, many communities have established a battered women's advisory group to oversee CCR intervention efforts. These groups consist of women who have been in violent relationships and can identify with current issues and recognize problems. This group is of great assistance in creating policies and should review them before they are implemented. Advisory groups vary in structure from a standing committee of selected members to



battered women attending support groups where the women's group facilitator brings the topic up for discussion. The design of a Coordinated Community Response depends on the dynamics of the given community. If many people actively address violence against women, more people will come forward and participate. If a community denies the reality of violence against women, then opportunities must be created for battered women to speak their opinions on the changes that affect their lives.

An example of keeping battered women at the forefront of CCR work can be seen in the Women's Advisory Group (WAG) at the Salt River Pima-Maricopa Indian Community in Arizona. This group of women oversees the Domestic Violence Coordinating Committee and works in the community to educate, provide services, identify areas of concern and strategize to create solutions. The WAG is a volunteer group of women dedicated to eliminating violence in their community.

Through their work, they have:

- stressed the need for safe houses for battered women;
- developed flyers to be distributed in the community, as well as having this same information placed in paycheck envelopes;
- written a regular column in the reservation newsletter;
- participated as presenters at domestic violence events;
- developed a mission statement to keep them focused;
- envisioned a community wide picnic with the theme of domestic violence;
- provided community education.

The Women's Advisory Group expands through recruitment, which allows them to stay current on issues requiring solutions and areas that need community support. For example, the WAG hired a domestic violence investigator whose primary job is to investigate domestic violence cases for prosecution. This relieves pressure and stress on the thirty-six officers who currently respond to all



cases, including domestics, who may not be able to find time for a thorough investigation. WAG is an excellent example of a model that provides women expanded opportunities and a greater voice for change in the community.

2. Know the people and the work they perform.

Understanding the system and the people who work in its institutions is as valuable as understanding the realities of the women who pass through it. Most of the work involved in systems advocacy builds on knowledge; changing a system requires a thorough understanding of how it works and the roles various practitioners play at each level. Some of the best allies come from within the institution itself. Observing practitioners as they do their required tasks provides a deeper understanding of the conditions under which they work, as well as giving insight into the specific procedures and protocols that regulate different jobs.

The court system is made up of clerks, administrators, court reporters, bailiffs, prosecutors, judges and probation officers. Law enforcement departments include dispatchers, officers, detectives, investigators, sheriffs and deputies. People perform a variety of tasks in human services, ranging from conducting intakes, community training and coordinating volunteers, to supervisory and administrative positions. The structure of these institutions varies from nation to nation; knowing whom to involve is key to the successful implementation of a Coordinated Community Response.

A person can enter the system at any of the points mentioned above. After initial contact, that same person travels step-by-step, navigating different areas and processes of an institution until they either receive the necessary services or are referred into another system. Someone in a shelter experiences a much different process than someone getting charged with criminal assault, but



knowing how each practitioner in the system operates and how this affects the way in which they interact with someone using the system, is instrumental to a CCR.

3. Learn about the policies and procedures of each agency.

When forming a multi-disciplinary approach, each practitioner should be familiar with the role of each institution involved. Learning about the policies and procedures of each agency provides a clearer understanding of what to expect from each practitioner and how policy and procedure requires they handle domestic violence situations. Each agency's role should be examined in order to begin to identify areas where policies and procedures need to change or where gaps exist in the overall collective response.

4. Form small working committees to create new methods of implementing procedures and policies.

Small working groups are generally the most effective way to draft new procedures. The working group should be as diverse as possible without becoming too large. Focusing on a specific task keeps the group efficient, as does developing several strategies to address problems.



5. Avoid taking on too many projects at the same time.

The time required for implementing changes and observing the effects of those changes needs to be generous to ensure thoroughness. Policies that sound good or look good on paper are useless if no one supports and enforces them. Choose your goals carefully, keeping the community's best interest in mind and strive for quality, not quantity.

6. Propose realistic and tangible changes that fit people's work.

When proposing new options for conducting investigations, arrest/jailing procedures, or simply arranging court calendars, be certain the work involved isn't overwhelming. Institutions are made up of people, and people very often resist change. If the ideas presented do not fit the way people currently work within the system, your efforts will be in vain. Many communities operate on limited budgets, so ensure that people have the ability and resources to implement the desired changes and that the goals are realistic and tangible.

7. Convince leaders and policy makers to try new ideas.

Once a policy has been drafted, follow it through by asking key people for their input and perspective. Your working group or CCR team may not include department heads, which will make implementation of the new policy more challenging. In some communities tribal leadership may be the final voice, so carefully prepare the rationale behind the proposed changes.



8. Test out ideas and make adjustments.

Before fully implementing a change, test the procedure and prepare for needed adjustments. In theory and on paper, the idea may appear to be well thought out, but when put into practice it may be over complicated, lacking in certain important areas, or harmful rather than helpful. An example can be found in the mandatory arrest policy used in domestic violence cases (see page 15). In 1981, the Duluth Police Department began implementing a mandatory arrest policy in responding to domestic violence calls. In the original policy, determining a crime had occurred and establishing probable cause included determining the primary aggressor. In theory, the primary aggressor language was intended as a guideline for law enforcement to determine that the subject committed the crime. It was not intended to guide officers in determining who struck the first blow; it was intended to allow officers to assess dangerousness and arrest the more culpable party. However, visible signs of injury can be contradictory—scratches on the suspect resulting from the victim’s use of self defense can be immediately evident, while the victim’s injuries (bruises or damage to the trachea from strangulation, etc.) can take time to appear—and officers were finding they did not have enough physical evidence to establish and arrest the primary aggressor. The application of the primary aggressor determination was leading to the arrest of women who fought back in self-defense. It also allowed responding officers to use the mutual combatant theory and arrest both parties. The primary aggressor determination included in the language of the new arrest policy was clouding the police response and making the arrest and subsequent charge difficult to prosecute, often resulting in dismissals or deferrals on the part of the court.

Through tracking and monitoring domestic violence calls and other records, Duluth’s Domestic Abuse Intervention Project was able to provide law enforcement with data that allowed them to modify their departmental policy language from primary to predominant aggressor. It discourages



dual arrests and in cases where officers have difficulty determining victim and suspect, they are instructed to “consider the totality of circumstances: the relative severity of injuries and fear inflicted in this incident, the relative use of force and intimidation used in this incident, information available involving prior incidents involving either party; or the likelihood of either party to commit domestic abuse in the near future.”⁷ This is a clear example of how the implementation of policy can require policy development and modification to uphold the CCR intent of providing safety and accountability in domestic assault cases.⁸

9. Organize trainings for practitioners on new procedures and policies.

Once the problems have been worked out of a policy, people must be made aware of the change, how it benefits their work and how it improves safety and accountability. Educate everyone on the new changes and schedule several trainings in order to reach all personnel. Working with department heads to mandate training attendance is the most effective way to ensure all personnel are involved and properly informed.

10. Monitor practitioners' compliance with new procedures.

After new a new policy or procedure has been implemented, be aware that institutions tend to fall back into familiar routines. If an institution agrees to a new policy, but continues in their past practice, a way must be found to ensure they follow through with what they agreed to do. In a CCR, people are often forced to step out of their comfort zone, examine beliefs and look at the way in which they do their work. People often operate within the confines of a system without true intention, or they don't have a clear understanding of the rationale behind implemented changes.

⁷ Duluth Police Department Domestic Violence Arrest Policy. Duluth, MN. 625/01.

⁸ By 1995, most law enforcement agencies across the country were using the predominant aggressor determination in their response to domestic violence calls.



Monitoring compliance with a policy change can support a department head's understanding of the necessity for change and maintain a certain amount of pressure on others to follow. Institutions can be held accountable for implementing various policies through a Memorandum of Understanding (see page 58).

11. Work with administrators and department heads to reach high compliance.

Work out a method with department heads or supervisors to monitor compliance with new procedures:

- Develop ways to remind people about changes, track progress, and follow-up with problem areas.
- Strategize with other department heads if the person failing to implement the changes is a supervisor or department head.

12. Document the impact of those changes on case outcomes and women's safety.

A large disparity exists between the number of women receiving advocacy (or victim services) and the number of domestic assault charges actually filed against men in the court system. In tracking and monitoring domestic violence cases, the monitoring agency must first examine how dispatch handles domestic violence calls, how officers make arrests and how prosecutors follow through with filing charges. After monitoring court cases, the finding might be that the prosecutor is not filing charges. When you question the reasons behind the absence of charging, the prosecutor may state that sufficient evidence to file charges was not obtained. In order to trace why there is a lack of evidence, monitoring dispatchers and riding along with the police is required. Perhaps at these points, very little information is being collected about the violence itself. Dispatchers may be focused on the nature and location of the emergency and law enforcement may be emphasizing questions relevant to completing their report. Systems change must address the type of questions



dispatchers ask when receiving domestic calls and the questions officers ask when responding.

While demographic information is important, the violent incident should be emphasized. This gives prosecutors the evidence needed to file criminal charges and results in the end goal, a higher rate of convictions.

Tracking and monitoring allows the community to document and evaluate the increased or decreased ability of institutions to provide protection for women experiencing violence through holding the abuser to a high standard of accountability. A Coordinated Community Response increases positive case outcomes and improves women's safety through monitoring offenders and keeping them accountable. If these results are not visible, then the CCR must be reexamined.

13. Institutionalize a cohesive response.

CCR intervention is a continual process. Staff turnover can be high; the CCR team must maintain its focus and commitment. Holding regular meetings can help establish a pattern that maintains this focus and provides a means to keep people informed and routinely kept up on current issues within your community.

Building a Coordinated Community Response requires bringing people together, forming working relationships, holding discussions about the issues and creating Memorandums of Understanding between participating agencies (see page 57). This requires considerable time and energy, depending on the circumstances and the number of agencies involved. Initializing a CCR can be exciting and the experience contains a lot of positive momentum mixed with challenges and resistance. Great patience, education training for everyone involved and a willingness to prepare people for addressing difficult problems are a necessity.



Once the CCR has accomplished its beginning goals, people may feel their commitment or energy wane. Provide them with on-going training on various topics and discuss related issues of women's experience in the context of domestic violence without limiting this discussion to emotional and physical abuse. Institutional change is a slow and continual process with many conflicts. Those involved need to focus on the tasks at hand and strive to resolve individual differences for the greater benefit of the community.

Inevitably, the group will require refocusing. People lose interest or become disheartened when problems in the community are not solved quickly and easily. The group's intentions easily can shift from intervention work to prevention efforts. Creating a CCR mission or vision statement allows the purpose and intent to be revisited throughout the process. An annual time to review the agreements between agencies aids in this focus.



1. Develop a Clear Strategy:

- a. Identify your purpose for organizing a CCR.
- b. What are the identified problems?
- c. What are the goals and objectives?
- d. Are you planning to conduct blind interviews in the community?
- e. Are you planning on canvassing neighbors for the interviews?
- f. What interview methods will be used?
- g. Will you need volunteers to help with the interviews?
- h. Are you planning on recording the responses to questions?
- i. Involve battered women in the process.

2. Interview Community Members:

Interviewing community people provides an accurate view of problems, barriers and frustrations with the criminal justice response to domestic violence.

- a. Assure those being interviewed that their identities will not be revealed and that private information will be secured and locked.
- b. Decide if interviews will be recorded; conducting personal interviews is time consuming but worth the effort.
- c. Have a specific list of questions, narrowing them down to four or five open-ended questions:
 - 1) What is the police response to domestic violence in your neighborhood?
 - 2) What happens when domestic violence is reported?
 - 3) Who do you call for help?
 - 4) What changes are needed to improve the criminal justice response?

⁹ Adapted from “Creating a Coordinated Community Response” by Genevieve James.



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- d. Provide time for the person to talk about other concerns.

3. Interview Battered Women:

Before conducting interviews with women's support groups, be sure to explain how the information will be used and that it will be kept confidential, i.e. no names will be used and it will be kept in locked files and destroyed by a certain date.

- a. Who did you call for help and why?
- b. What was the level of response to the violence?
- c. How long did it take law enforcement to respond to emergency calls?
- d. What happened to you and your partner?
- e. What kind of questions did they ask?
- f. Was child protection called? Why?
- g. What happened to your partner in the court system?
- h. What questions did the judge ask?
- i. What changes need to happen to improve the criminal justice response?

4. Identify and Recruit Allies and Invite Key Players:

It is important to recruit one or more tribal council members to participate in the CCR; they play a vital role in building a relationship with judges and the police. Invite key players that have the authority to implement policies, including the chief of police, chief probation officer, judges, prosecutor, director of the detention center, facilitator of men's non-violence groups, child protection worker, shelter director, health care director, EMS director and school principal.



5. Have Purposeful Meetings:

- a. Be sure to develop meaningful agendas for every meeting.
- b. Solicit agenda ideas from the group prior to the meeting date.
- c. Send out the meeting minutes and agenda at least a week before the meeting. Commit as a group to a specific meeting time and date.
- d. Begin each meeting on time and end on time.
- e. Identify, as a group, the goals and objectives of the CCR team.

6. Develop a Common Framework for Domestic Violence:

Each CCR team member is shaped by different community influences, each will have certain beliefs about why domestic violence happens in the community as well as attitudes about domestic violence that originate from life experiences, formal education, family, and/or the media. Additionally, each will have a perspective on domestic violence shaped by their profession. Start by developing a common ground and framework from which to examine domestic violence, and commit to ongoing trainings.

7. Establish the Infrastructure:

The CCR Coordinator is responsible for facilitating the development of a respectful decision making process.

- a. Decide how the group will make decisions.
- b. Will the group make decisions by consensus or by voting?
- c. How will it resolve conflict or disagreements?
- d. How will it resolve old turf issues?



8. Designate Tasks of the Team:

- a. Develop a mission statement that reflects the goals of the CCR.
- b. What is the purpose of the CCR team?
- c. What message does it want to convey to the public?
- d. What are goals and objectives of the CCR?
- e. Create a Memorandum of Understanding demonstrating the commitment to ending domestic violence in the community.
- f. Have a public signing of the MOU to raise community awareness.

9. Develop a Tracking System:

Tracking is the process of examining the strengths and weaknesses of the systems response through monitoring the police, dispatchers, judges, probation, facilitators, and others in the system to assess whether they hold offenders accountable. Tracking allows the advocate access to police reports, criminal complaints and sentencing information. This is specific data documented on forms gathered from criminal and civil court. Data on cases and outcomes need to be organized, tabulated and later shared as a discussion tool for making suggested changes. This data can be organized manually or by computer using spreadsheets or a database. The method of collection is the decision of each Coordinated Community Response team.

10. Review Existing Policies and Protocols:

One of the tasks of the CCR team is to review existing policies and protocols. Each member should explain their particular agency's policies as they relate to their domestic violence response. Protocols are handled in the same manner. New policies are developed based on the information gathered from community interviews and meetings.



11. Evaluate the Process:

Evaluating the CCR process should occur during the project, not just at the end of the fiscal year. Gather numbers throughout the year as an ongoing part of the monitoring and tracking process.

- a. Elicit the help of a woman's advisory group to help evaluate the effectiveness of the new policies, goals and objectives.
- b. Has the project met the goals and objectives? Why or why not?
- c. What objectives need revision?
- d. Has the number of reported cases of domestic violence increased or decreased?
- e. Why has this happened?
- f. What is the recidivism rate? What was it a year ago? What is it attributed to?
- g. Are officers complying with the code when responding?



When establishing a CCR, unique characteristics of the community must be considered. Not every community has the same level of resources or access to information. Different jurisdictional issues concerning the application of tribal, federal and state laws impact communities in different ways. For instance, a CCR based on a criminal justice approach may not be possible or even appropriate in remote areas. What is critical in developing a Coordinated Community Response is that batterers are held accountable and women are safe.

In remote areas, ensuring batterer accountability and women's safety can prove difficult. Alaska, for example, has two hundred and twenty-nine villages, many only accessible by plane. Law enforcement is provided by Village Public Safety Officers (VPSOs). Approximately one hundred ninety Village Public Safety Officers serve two hundred and twenty-nine rural Alaskan Native villages. Further complicating this is the VPSO turnover rate, calculated to be as high as 55%.¹¹ Some common issues affecting VPSO performance and retention are inadequate training, low comparative wages, lack of local supportive services and informal crime policies and procedures. Often, a VPSO is expected to mediate situations, an expectation that could further endanger a battered woman. VPSO authority is limited and they are not allowed to intervene in major criminal cases. Seventy-five percent of VPSOs have responded to calls where the perpetrator had a firearm; VPSOs are not permitted to carry firearms. High turnover, the lack of adequate police protection and authority exposes battered women to potentially lethal situations. It makes holding offenders accountable and keeping women safe through a criminal justice response very difficult.

¹⁰ David, Eleanor, ANWC. Interview. Duluth, MN. 11/02.

¹¹ Wood, Darryl. "Police Turnover in Isolated Communities: The Alaska Experience". Journal of Criminal Justice 30: 197-215 (2002).



The lack of adequate detainment facilities is also a serious issue. The Alaskan state troopers who manage and supervise VPSOs may take from one to three days to respond on site, due to the remote location of many villages. When a batterer is arrested and is taken out of the village, he serves only a short time (if any) at the closest urban correctional facility. Limited incarceration space and a lack of funding prevent additional space from being added. This translates into extremely low arrest rates for batterers who do not comply with the terms of their probation. It becomes the abused woman's responsibility to find her own safety. Rural women depend on others to open their homes as safe houses. With no access to an outside shelter, a woman is dependent on what safeguards are offered within her village. In addition, if the perpetrator remains incarcerated, the woman might have to rely on others to help her provide for her family in her partner's absence. A criminal justice approach to addressing domestic violence can introduce a host of other problems related to basic survival, such as shelter, food and health needs.

So what can happen in these circumstances? How can the components of a CCR be implemented? The values of safety for women and accountability for men can still be established with dedication and perseverance. Work must be done in a pro-active manner, utilizing cultural strengths and reclaiming traditional ways that uphold respect for women and all beings. When responding to domestic violence:

- Emphasize which belief system supports domestic violence.
- Encourage traditional beliefs and practices that respect life.
- Create accountability by working on how the community as a whole must respond to violence.
- Invite key people, such as law enforcement, tribal council members, elders, local village leaders, and others to come to the table and dialogue about the effects of violence.



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- Develop tribal/state Memorandums of Understanding with state and village law enforcement, in order to establish protocols and procedures in developing appropriate responses to domestic violence.

The end goal is to restore harmony and balance to the community, providing a safe place for all community members. What happens to one happens to all. The more steps taken to make the community aware of domestic violence and free people of beliefs that sanction the use of violence against women, the better the community will be.

An example of a CCR intervention in a remote area follows.¹² This intervention was begun by the Alaska Native Women’s Coalition (ANWC). Currently, ANWC has begun to implement:

- **Re-education Groups.** Men attend re-education as part of their sentencing. Community centers will house computers with web cams. Through the use of a facilitator to oversee each operation, batterers in remote locations can attend re-education groups as part of their probation. This not only provides access to education to end violence against women, but maintains a presence of batterer accountability in the village.
- **Women’s Group.** Women are encouraged to come together to meet and talk, developing their own community and space to voice their experiences.
- **Men’s Group.** Young men come together to eat with older men. The purpose is to allow younger men to learn their traditions through the experience and stories of elders, including the respect for women inherent in Athabascan culture.

¹² Supra note 8.



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- **Pictures of Elders.** Digital cameras are being supplied to villages so pictures of elders may be taken. These pictures then are posted with each elder’s message of respect printed across their image.

Efforts like these are ways to address and change the violence using cultural ways. Educating the community—exploring the dominant culture belief systems introduced through colonization, reclaiming and passing on traditional ways by bringing elders and youth together, bringing women together to voice and share their experiences—creates change through using community strengths and beliefs. It is a way of combating the violence introduced through colonization with tools and beliefs that existed prior to colonization.



Additional Questions for Intervention Considerations in Rural Areas¹³

1. Are women safe and batterers held accountable? Why or why not?
2. Are there safe houses for battered women? Why or why not?
3. Is there a member of the council who could be an ally and an effective influence for promoting respect?
4. Can domestic violence even be used as a phrase within our community?
5. Is there a women's group in place? How can we establish this?
6. Is there a presence within the community where batters go to be held accountable? How could you develop one? How can the community center be more utilized in rural communities? What resources do you have?
7. How can you use the concept of respect in domestic violence work?
8. What are the limitations of institutions? How can you work with them?
9. What sanctions can your tribal council pass to protect women?

¹³ Supra, note 4.





Section 3: Structuring Intervention Efforts

All intervention programs need the support of the community in order to be effective. The community must put pressure on those who resist changing policies and procedures, as well as supporting those who speak out against domestic violence. If there is a great deal of resistance to confronting domestic violence in the community, find a few people who are willing to serve as allies. These allies should be used to support the work for change in policies and procedures. Develop a plan to engage and involve more people who will help the larger effort. Strong community support is instrumental to achieving the goals of a CCR.

Involving battered women or formerly battered women gives a CCR the voice of experience. Women living in violent relationships know the struggles and complex realities that they face on a regular basis. Incorporating their voices lets people know how the various institutions can best serve battered women, and helps individuals within those institutions better understand the dynamics of battering. When focusing on safety, ask battered women if the development of certain policies will provide a better sense of protection. Creating groups such as a battered women's advisory committee allows their experience to guide the work of your intervention program. Their input is key to measuring the success of intervention efforts.

Dominant culture states that expertise must be gained through formal education. Power and credibility are often conferred on the basis of a university degree and the type of employment held, while education gained through life experience is not recognized. However, traditional culture holds that all people should be respected; everyone has something to contribute to society, the thoughts and experiences of each member of a community are of value. When organizing at a community level, it is important to remember to utilize the skills of community members, with an



emphasis on experience rather than formal education. At the same time, utilizing the privilege or direct authority of those who are powerful positions is crucial to creating change. The best approach to community organizing is to have each person share their knowledge and experience to develop a fuller understanding of domestic violence.

Organizing involves a great deal of footwork. Talk with many community members to increase awareness and foster knowledge of the issues of violence against women in the community. Connect with those who can influence other people who may resist the implementation of a Coordinated Community Response. Building relationships with people in the community is just as important as building relationships with people in different agencies. The work involved requires commitment and effort to hold batterers accountable for their violence and keep women safe.

Every tribe, village, pueblo and rancheria is unique and these differences will dictate which agencies or institutions to start with in establishing a CCR. Tribes that have their own criminal justice infrastructure look at their own internal response, while tribes in PL 280 states deal with state courts. Intervention looks very different in many areas in Alaska. Because many communities are so remote, contact with outside institutions is limited. If your community is tucked away in the mountains two hours away from the nearest town, a Coordinated Community Response based on a court intervention model may not be relevant. You may find your CCR approaches safety and accountability from the basis of community interventions to address the problem of domestic violence. When structuring your intervention efforts, make sure they are relevant to the needs and resources of your community.

Connecting with agencies or institutions is critical to intervention work. The majority of CCR success is based on building and maintaining relationships so the team can come together and



handle hard issues. Typically, the CCR team is comprised of members from various professions with a history of animosity. Knowing and trusting that such resentments can and will be worked out strengthens your response. Common respect must be part of the process. If people feel insulted or blamed, the focus shifts from the issue of violence against women to personality issues within or between organizations. Violence will not be addressed and limitations will be put upon learning from one another's experiences. A Coordinated Community Response is about sharing information so that institutions may better serve the community. This cannot be done through one person championing the current systems response. The group needs to cooperate to reach the end goal of ensuring a consistent and cohesive response where each agency fulfills their role. As long as the group operates with the same understanding—working together to address violence in the lives of women—they should be able to keep professional relationships with each other.

Organizing and developing a common philosophy is, perhaps, the most time-consuming stage of intervention work. These efforts are crucial when it comes to the actual work of a CCR intervention team. Relationships strain, conflicts arise, priorities change and opinions vary; any of these undermine the groundwork if there is a lack of thorough and effective organization and development. Revisiting these issues periodically helps keep the CCR team current and maintains the focus of the work.

The philosophy of a Coordinated Community Response directs the way in which the community will address the issue of violence against women. To carry out an effective CCR, the team states the specific manner in which they intend to protect women and hold offenders accountable. The response must meet the needs of the community. This may entail using CCR concepts rather than fully implementing all the elements of the intervention model if those elements are not relevant to



your community. Some aspects may fit; others will not. Some may need to be added, others tailored.

When building your CCR, recognize the vast differences that exist between Native communities (i.e. services, funding resources, systems of governance, transportation, law enforcement and court systems). The ability to implement CCR concepts varies greatly from nation to nation. If not carefully planned and organized, the presence of a CCR can create a false sense of security for the agencies and women in your community. It is important to be mindful that a Coordinated Community Response will not be the absolute end of violence against women in your community. Rather, a CCR begins a process of working with institutions to hold offenders accountable and keep women safe—it is one aspect of organizing to address domestic violence, and it focuses on systems advocacy. Existing services should be the starting point. The available people and resources in the area are what must be used to create an appropriate response to the needs of the community.

When bringing people to the table to discuss issues of violence against women and intervention activities, prioritize the issues:

- Is there a battered woman's shelter?
- Is there a program for men who use violence?
- Is there any training available to improve the understanding of power and control issues? If so, what is covered and with whom?
- Are there any existing policies and procedures that address violence against women?

The CCR team must keep up with the issues, creating innovative solutions for women's safety and offender accountability as needs and priorities tend to shift.



Principles of Intervention ¹⁴

It is vitally important that policies and procedural guidelines for intervention in domestic assault cases be founded on a sound theoretical basis which protects battered women, helps judicial system practitioners discharge their public duties and renounces the practice of victim blaming. The principles below guide the policies and procedures of the Duluth Abuse Intervention Project.

- Women must have access to safe emergency housing.
- Women who experience violence should be provided the information and advocacy necessary to act in the courts and should not be denied protection because of the cost of professional assistance to obtain police or court protection.
- Except in the case of self-defense, violence is a criminal offense and the legal tools of the police and court should be used to prevent further assaults. The intensity of intervention should be based on the need for protection from further harm and on what is needed to create deterrence for the abuser.
- The first priority of intervention should be to carry out policies and protocols that protect a woman from further harm.
- Policies and procedures adapted by agencies in the judicial system should be continually monitored by an organization that is outside the judicial system and is guided by advocacy programs and battered women.
- The primary focus of intervention should be on stopping the assailant's use of violence, not on fixing or ending the relationship.
- Policies and procedures should act as a general deterrent to battering in the community.
- In general, the court, in determining its action in a case, should not prescribe a behavior or course of action for a woman, e.g., it should neither force testimony by threatening to jail victims for refusing to testify, nor mandate treatment for the victim who has not used violence.
- The courts and law enforcement agencies should work cooperatively with advocacy programs and provide the shelter/advocacy program and battered woman with the broadest possible access to legal information.

¹⁴ Pence, Ellen. Coordinating Community Responses to Domestic Assault Cases: A Guide for Policy Development. Duluth, MN: Minnesota Program Development, Inc., 1989.



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- The courts should, when appropriate, mandate educational groups for assailants and impose increasingly harsh penalties for any continued acts of harassment and violence they commit.
 - All policies and procedural guidelines should be reviewed by members of the communities not represented by the majority for inclusiveness, such as the gay/lesbian/bisexual community. Their review should include a close look at monitoring procedures to safeguard against biases in implementing policies.
 - All practices and policies should be continually evaluated and discussed to ensure their effectiveness in protecting all battered women and to provide ongoing training for agencies.
 - All interventions must account for the power imbalance between the batterer and the battered woman.

The ongoing work of a Coordinated Community Response revolves around a common set of activities designed to ensure the safety of women and batterer accountability. This is where a group of problem solvers can be instrumental in achieving an effective response or an innovative solution that overcomes barriers. The following *Eight Activities of Intervention* provides a brief outline into what many communities have determined to be the elements of effective intervention.



Eight Activities of Intervention¹⁵

1. The intervention project changes how the community thinks about violence by building an underlying philosophical framework, which guides the intervention process by:

- Helping practitioners within the justice system reduce conflicting theories about battering—how to protect battered women and hold offenders accountable.
- Working toward an understanding among practitioners of the complex dynamics of an abusive relationship and commitment to handle cases in a manner that does not blame or re-victimize the battered woman.
- Recognizing that violence is intended to have an impact on the person being hit, kicked, or shot at, giving one party power over the other.
- Reviewing current research and educational materials on battering and keeping practitioners updated.
- Responding to tensions often caused by conflicting philosophies by coordinating ongoing discussions among practitioners.

2. The intervention project assists in the development and implementation of policies and operating procedures of the intervening agencies involved in the Coordinated Community Response by:

- Charting out the roles, possible intervention action, and procedures of each intervening agent in the system, e.g., 911 dispatcher, police officer, jailer.
- Ensuring that each agency's policies complement other agency policies.
- Clarifying for practitioners when they may exercise discretion, when they must take certain steps and what conditions suggest different options.
- Meeting with practitioners from each agency to examine how current practices affect battered women and exploring new practices that can maximize their safety.
- Designing ongoing trainings for practitioners on the implementation of policies and procedures.

3. The intervention project monitors/tracks cases from initial contact

¹⁵ Ibid.



through case closure to ensure practitioner and offender accountability by:

- Determining what information is important and where and how to get it.
- Developing policies with each agency for data collection and creating a process to notify administrators when practitioners fail to comply with agreed-upon policies.
- Tracking cases for breakdowns in the system.
- Utilizing data to determine if agency objectives are being realized.
- Maintaining case files to ensure the offender is complying with all court orders.

4. The intervention project coordinates the exchange of information and interagency communication on a need-to-know basis and coordinates interagency decision making by:

- Routing all available information on a case to those practitioners involved.
- Coordinating interagency meetings to resolve problems with individual cases and discuss related issues faced by practitioners.
- Facilitating input by all people and agencies that are affected by the development or change of a policy.
- Providing for the exchange of information between agencies so there is a common understanding of how their policies complement one another's efforts.
- Coordinating interagency meetings to assess the coordinated response.

5. The intervention project ensures that resources and services which offer safety and protection from further abuse are available to battered women and other at-risk family members by:

- Providing information and referrals to battered women about advocacy programs and shelters.
- Ensuring that battered women have access to basic resources including emergency safe housing, legal advocacy, access to resources, and support.

6. The intervention project utilizes a combination of sanctions, restrictions and rehabilitation services to hold offenders accountable and to protect women from further abuse by working with:

- Law enforcement to adopt an arrest policy.
- Prosecutors and judges to develop policies and guidelines that discourage the "screening out" of cases.



- Probation and the courts to ensure that pre-sentence investigations are conducted and, when appropriate, extended probation periods ordered.
- Judges to ensure that repeated acts of violence or violations of Orders for Protection result in stricter penalties, including jail, batterer's intervention program, no-contact provisions, restitution, community service, and other restrictions.
- Counseling or batterer's intervention programs to hold offenders accountable by monitoring the offender's attendance at groups.

7. The intervention project works to undo harm to children by

- Assessing the risk to children at each point of intervention.
- Providing safe places for children to visit with their non-custodial parent.
- Requiring abusive parents to participate in groups that focus on helping children to heal from the effects of living in a home where there has been violence.
- Accounting fully for the pattern, severity, and frequency of violence being used by a parent when determining visitation, custody, and rehabilitation plans.

8. The intervention project evaluates the Coordinated Community Response from the standpoint of woman safety and the overall objectives of the intervention project goals by

- Collecting data on a continuing basis to determine if the agreed-upon procedures and policies are consistently applied.
- Conducting research to determine the effectiveness of policies and procedures in protecting women from further violence and reducing the victim-blaming practices of institutions.
- Evaluating the level of change of court-mandated offenders by analyzing reductions in abusive behaviors and the extent to which women are free to act without control or restraints from the offender.



Basic Interventions in Domestic Violence Cases¹⁶

- 1. Interview men and women separately.** Battered women cannot talk freely when abusers are present. By talking to women separately, you lessen the risk of retaliation and promote more disclosure.
- 2. Have clear rules about confidentiality and disclosure.** Fearing retaliation, many women protect themselves by not sharing information they know will be disclosed in court or elsewhere. If your policy is that you will disclose certain types of information in court even if she wants this to be kept confidential (e.g. if she tells about a felonious assault, child abuse, etc.) make sure she knows this beforehand. This could be a lifesaving measure on your part. Also being straight about this will establish trust.
- 3. Do not tell the offender anything the battered woman has told you unless you're completely sure that it will not endanger her further.** Even if she gives you permission to share what she has told you, make your own assessment about safety and the risk of retaliation.
- 4. Assess the history of violence in the relationship.** Conduct a pre-trial or post-trial assessment according to the policies in your jurisdiction. How severe and persistent has the violence been? How has it affected the battered woman and the children? Is there a heightened danger of lethal assault? Is it important to warn the woman? Create a Dangerousness-Lethality checklist and questionnaire for battered women to use.
- 5. Assess the risk of retaliation and of continued harassment/abuse.** How safe will the battered woman and the children be? Is it reasonable to expect the offender to restrain himself? Has he respected previous restraining/protective orders? Has he made, and broken, many promises? If you think your best efforts, including highly restrictive monitoring of the offender, are not likely to turn out well because the offender is so dangerous and uncontrollable, share this information with the woman. Though this may make her anxious, it may influence her to activate all her self-protective resources.

¹⁶ Wherever suggestions are provided for measures to take with offenders, the intention is to give a menu of interventions that might be helpful. Different solutions will fit different jurisdictions. The above are taken from "Domestic Violence and Probation", by Fernando Mederos, Denise Gamache and Ellen Pence: <http://www.vaw.umn.edu/documents/bwjp/probationv/probationv.html>.



- 6. Assess the impact of substance abuse.** Determine whether the offender is abusing drugs or alcohol. You may recommend an independent evaluation, drug/alcohol testing; question the intimate partner and consult the court and police arrest records on this matter.
- 7. Develop a probation plan for the offender.** What rules should be imposed on him by probation to keep him from further harming his partner and/or children? Probation officers must make decisions about levels of control and the intrusiveness of the conditions of probation. This plan may also include drug/alcohol evaluations, testing and treatment; attending a batterer treatment program.
- 8. Become knowledgeable about resources for battered women.** Victims of domestic violence need services that can address their need for support, understanding, safety planning (while they remain at risk), safety and refuge (even help in fleeing offender), financial resources, housing and help for their children. Battered women's shelters and programs usually have the required array of services and specialized experience with safety issues.



D R A F T

Purpose:

It is the purpose of this chapter to ensure that domestic violence protection orders issued by other jurisdictions, including tribal and state courts, be honored and enforced by the courts of the _____ Indian tribe as well as tribal law enforcement. The Tribe finds that federal law, 18 U.S.C §2265, requires state and tribal courts to honor protection orders entered by each court. To implement this section of federal law, and to assure protection for victims of domestic violence within the _____ Indian reservation this chapter is being enacted. The problem of domestic violence and stalking on the _____ Indian reservation is seriously impacting the ability of the Tribe to provide for the health and well-being of its tribal members and threatens the political integrity of the Tribe because of its serious impact upon victims and their families to function in their respective tribal communities. This ordinance is enacted pursuant to the inherent, sovereign right of tile _____ Tribe to enact ordinances for the welfare and protection of all persons on the _____ Indian reservation and it is intended to apply to all acts of domestic violence and violations of protection orders within the exterior boundaries of the _____ Indian reservation and all trust lands and dependent Indian communities that lie outside the exterior boundaries of the reservation.

Definitions:

1. 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.
2. 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.
3. Mutual Protection Order - an order issued by a tribal or state court that 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.
4. Issuing Court - a tribal or state court that issues an ex parte or permanent order of protection against a person.

¹⁷ Violence Against Women Online Resources: www.vaw.umn.edu. Updated 6/00.



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5. 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.
 6. 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.
 7. 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 _____
 8. Central registry of protection orders - a list of protection orders issued by the state and tribal courts either maintained by the state or Some tribal entity, which contains verifiable methods of identifying the existence of protection orders to be enforced under federal law, 18 U.S.C. §2265, and the person against whom the protection order is enforceable.

Enforcement of Foreign Protection Orders:

Whenever any law enforcement officer of the _____ Tribe or the Tribal Court is presented with an order, either ex parte or permanent, or verifies the existence of such an order with the court or law enforcement of the issuing jurisdiction, which restrains any person from harassing, annoying, stalking, contacting or coming within a certain proximity to another person that was issued by another tribal or state court, that officer and court shall enforce such order and all provisions of such order, including the award of custody and property in such protection order, as if it were issued by the _____ Tribal Court.

Role of Law Enforcement in Enforcing this Section:

If a law enforcement officer of the _____ 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 _____ 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.

Immunity for Good Faith Enforcement of Foreign Protection Order:

An officer or any other law enforcement official of the _____ Tribe who acts in good faith in enforcing a foreign protection order and its terms shall be immune from suit for wrongful arrest or any other civil or criminal action. This immunity shall extend to a tribal officer who effects the arrest of a non-Indian for violation of a protection order.



Role of Tribal Court in Enforcing This Section:

The Tribal Court of the _____ Tribe shall enforce a protection order, either ex parte or permanent, and all provisions of that protection order, including child custody and property awards, if all the following are satisfied:

1. the respondent received notice of the order in compliance with requirements of the issuing jurisdiction;
2. the order remains in effect in the issuing jurisdiction;
3. the issuing court had jurisdiction over the parties and subject matter;
4. the respondent was afforded reasonable notice and the Opportunity to be heard prior to the issuance of a permanent protection order or in the case of an ex parte order it appears from the face of the order that a hearing will be conducted within reasonable time to allow the respondent to raise any defenses he may have to the issuance of a permanent protection order.

Registration of Foreign Protection Order with the Tribal Court:

Any person who has received a protection order, either ex parte or permanent, from another tribal or state court, may file the protection order in the Clerk of the Tribal Court and request that the Tribal Court of the _____ Tribe grant full faith and credit to that protection order. Immediately upon the filing of that protection order with the Court, a Tribal Judge shall review such filing and if it appears from the face of the protection order it meets the requirements of the foregoing chapter shall enter an order recognizing the protection order. Said order shall immediately be forwarded to tribal and local law enforcement. A person shall be not charged a filing or registration fee for the filing of a foreign protection order. A person protected by a protection order issued by another tribal or state court need not file that protection order with the Tribal Court of the _____ Tribe in order to receive law enforcement protection from the Respondent under this Chapter.

Violation of Foreign Protection Order:

It shall be a Class _____ Misdemeanor, punishable by _____ months in the tribal jail and a fine in the amount of _____ for any person to violate a protection order, either ex parte or permanent, issued by any state or tribal court within the jurisdiction of the _____ Tribe. It is not a defense to this section that a protected person had notified or registered the protection order with the _____ Tribal Court prior to the violation. If the person found to have violated a foreign protection order is a non-Indian, the Tribal Court may exercise civil jurisdiction over said person and impose whatever civil penalties it feels appropriate in accordance with tribal law.



Solidifying Your Relationships

- Developing a Memorandum of Understanding
- Tips for Cooperative Agreements
- Outlining the role of each practitioner and intervention work
- Role of participating agencies in a CCR

Developing an MOU

A Memorandum of Understanding (MOU) is the guiding element in the creation of a coordinated institutional effort to address domestic violence. The concepts and contributing efforts listed by each participating agency in the MOU focuses the CCR team on the task at hand—providing safety for women and offender accountability. An ideal MOU lists all the procedures that each participating agency follows to meet the safety and accountability needs of their community, and should:

- List the services each agency offers and will offer in dealing with domestic violence;
- Discuss how the CCR team will handle emergency situations;
- State the intent of having a Coordinated Community Response.

Defining the specific purpose of the CCR team is fundamental to effective domestic violence response and intervention. The basic structure of a CCR is similar to a task force, a coordinating council or family violence committee, with some very important differences. Typically, family violence committees and coordinating councils are broader in scope and involve larger service provider representation than does a CCR team. A task force usually deals with a particular issue on a time-limited basis: once they make a resolution or recommendation, the task force dissolves. The CCR model is unique due to its very specific intervention, which is designed to promote a better



criminal justice or institutional response to domestic violence. The number of agencies involved in a CCR is limited due to its intent; it focuses specifically on systems' intervention, safety, and accountability. If the CCR team operates within time limits or too narrow a perspective (as does a typical task force), it falls short of the end goal of lasting change. If the CCR team is structured like a family violence committee or a coordinating council, the CCR team will be too large and the interest of the many agencies involved may drown out the needs of battered women, fail to hold batterers accountable and ultimately compromise confidentiality for the men and women involved. While many communities engaged in CCR operate under a task force, council or committee title, their effectiveness does not derive from the name of the group, but from the means by which they operate. Stating the shared understanding and common goals of the CCR team in the MOU provides direction and focus that enhances the safety of women. The MOU holds not only batterers accountable for their use of violence, but also holds the participating agencies accountable for following through in their response to domestic violence.



Sample Memorandum of Understanding

Memorandum of Understanding

The Coordinated Community Response Team, consisting of representatives from the _____ Tribal Courts, _____ Prosecutor’s Office, Indian Health Services, _____ Law Enforcement Department, _____ Tribal Social Services Department, and _____ Women’s Coalition, was established in _____, 20_____, to coordinate intervening agency efforts to institutionalize, i.e., establish written policy, protocol, and domestic violence response process and procedures that will (1) centralize victim safety and discourage system re-victimization; (2) improve offender accountability; and (3) change the climate on the _____ reservation to one of intolerance of domestic violence.

The purpose of this memorandum of understanding is to establish guiding principles that will be followed by all criminal justice, social and health care agencies, and non-profit, non-governmental domestic violence related groups/programs on the _____ reservation, demonstrating respect for family and clan members as provided in _____ ordinance, and to fulfill the statutory eligibility requirements of the Violence Against Women Act of 1994.

Upon proper signature of representatives of the above-mentioned agencies, this memorandum of understanding shall become effective immediately and shall continue in effect until otherwise agreed to by the parties.

It is understood and agreed that, primarily, all _____ tribal court judges, prosecutors, law enforcement officers, and victim advocates, shall adhere to the following:

1. Domestic violence offenders who violate the terms of a valid and outstanding order of protection shall be subject to immediate arrest.
2. Victims shall not bear any costs associated with filing charges or the issuance or service of charges on an abuser in connection with prosecution of any domestic violence offense; victim shall not bear the costs associated with the issuance or service of a warrant, order of protection or witness subpoena.
3. Mutual orders of protection shall not be issued, except in cases where both spouses file a claim and the court finds facts indicating that both spouses acted primarily as aggressors and that neither spouse acted primarily in self-defense.
4. Law enforcement officers shall not arrest both offender and victim, unless it has been determined that both acted primarily as aggressors and that neither acted primarily in self-defense. Law enforcement officers, prosecution, and judges shall receive proper training and education on the rationale that discourages or prohibits the dual arrest of offender and victim.

The parties further understand that the above provisions shall be included in a more comprehensive Domestic Violence Ordinance that will be presented upon completion to the _____ Tribal Council for approval.



Prepared and submitted by the _____ Domestic Violence Task Team, this _____ day of _____, 20_____.

Tribal Prosecutor

Law Enforcement Services

Judge—Tribal Court

Counselor—Guidance Center

Women’s Coalition

Indian Public Health Services

Chairman of the Tribe



Specifically identify who is involved in the CCR.

Example: “Utilizing funds under the STOP Violence Against Indian Women Discretionary Grant (“STOP” Indian Grant) and the Grants to Encourage Arrest Policies (“Arrest” Grant), the Tribe shall address the problem of domestic violence on its reservation through the coordinated response of: law enforcement, prosecution, court, advocates and service providers. The following is a summary of the Tribe’s plan for each participating agency’s role and responsibility for implementation of these grants.”

State the philosophy and focus of the CCR team.

Example: “It is the consensus of the coordinated community response team that violence against women is a serious concern in our community and it has had a devastating effect on our community. To address these concerns the team will approach our work by keeping woman safety and offender accountability in the forefront of our work. With this effort, the STOP grant will address the service and educational needs of the criminal justice system, coordination among the CCR team, and services to women who have been battered or sexually assaulted. The arrest grant will emphasize training and development of law enforcement and prosecutorial protocol and procedures.”



List each individual’s role in the CCR team.

Example:

- “Project Coordinator will be responsible for creating an agenda, disseminating minutes, convening and facilitating meetings.”
- “Law enforcement will provide arrest and incident reports.”

Clearly state the contributions and responsibilities of each player involved in the team. This will help minimize assumptions regarding each person’s role or capacity and will set the standard by which your team is going to respond.

Summarize the intended outcomes of the CCR.

Example: “By this coordinated effort the CCR team will improve the coordination of services, monitor offender compliance with court sanctions, and prioritize the need (identified by the team) to educate the public, civil and criminal justice agencies and service providers on the dynamics of domestic violence. This effort will focus on:
1) Making changes enhancing women’s safety, without re-victimizing or “case managing” her (pushing her through the system and not recognizing her individual experience and needs), and 2) Holding the offender accountable for his behavior.”



Have all participating parties sign and date the same MOU.

Note: This is important so that each party knows the mission and philosophy of the CCR team as well as what is being offered by each member of the CCR team.

Understand the differences between a Memorandum Of Understanding (MOU) and a Memorandum Of Agreement (MOA). Generally speaking, an MOU outlines how agencies will work together to achieve a common goal; an MOA is usually a more formalized document viewed as a legally binding contract. Although these terms are often used interchangeably, you may encounter difficulties getting agencies to sign a document that may be interpreted as a legal contract—consider this in the negotiation process.

Regularly revisiting the MOU is crucial to keeping each agency’s CCR involvement current. The role of an agency may change, staff representing an agency may change, there may be a shift in the focus of intervention efforts, or an agency may not follow through with their commitment. If new policies or procedures are implemented these updates should be included as well. Including an annual expiration date in the MOU can enhance an agency’s commitment to coordinating, as there is a clear time frame listed. An annual expiration date also keeps the group focused on the CCR purpose and goal.

An MOU is more than a piece of paper that gets filed away and forgotten, more than a statement that two agencies will refer clients between them, and more than a gesture to collaborate. An MOU documents that agencies in the community are concerned enough about violence against women to



come together in a meaningful way to address this problem. Consider the following when developing an MOU:

1. Be sure that each agency brings a high level of commitment to this collaboration. Obtaining agreements from each agency to sign or agree to one single MOU may prove difficult and that is fine. Just remember, don't become too overbearing with a hesitant agency. Instead, present them their specific MOU, and then present the full MOU when it comes time to renew the agreements.
2. Be sure issues of confidentiality and information sharing are covered. Agencies gather a great deal of information on the lives of the individuals they come into contact with. When four or five different services come together, they can reveal large amounts of personal detail. Be clear on what information each agency can and will share and the purpose of sharing such information. Transitioning from monitoring the agency's response to hold offenders accountable to case managing individual women can be all too easy and should be avoided. The focus of a CCR is ensuring women's safety through batterer accountability.
3. Many additional issues can and will arise. However, through deliberate planning and creative problem solving, the CCR team should be able to overcome barriers.



The primary work is completed by a group of “Problem Solvers”.

This effort will not succeed if it becomes a process of finger pointing and blaming someone else for whatever problems are identified. Come together as a group and problem-solve to make the system better. Keep the ultimate goal of offender accountability and the safety of women in mind at all times. Work and cooperate for the greater good. If there is a lack of participation by an agency involved, the CCR is not going to be as effective due to the missing link.

There is equal representation from the applicable agencies.

A critical component of the development process is equal representation from each agency involved in the process. This balance is important to ensure that the cooperative agreement process is not perceived as the property of one system—it’s a coordinated community response.

The work is completed in an atmosphere of mutual respect.

It is also critical that the process is completed in an atmosphere of mutual respect. The setting should be a safe environment in which to share, learn, and explore. It is all right to acknowledge differences between systems, but not in a stereotypical or judgmental manner. The unique sovereign status of Indian Nations must be respected. Mutual respect is also shown by a willingness to alternate the site of the meetings – state and federal representatives must be willing to travel to reservations for meetings.

¹⁸ Excerpt from “Memorandums of Understanding: Indian Nations, State and Federal Governments”. The Center on Child Abuse and Neglect. U.S. Department of Justice. 3/00.



The agenda is focused upon areas of mutual concern or shared interest.

It is vital to focus upon identifying areas of commonality, instead of focusing on differences. The process should center upon the areas where cooperation can be achieved rather than a litany of insurmountable problems. Focusing upon the areas of mutual concern or shared interest creates confidence and trust that will smooth the path when genuine disagreements are encountered down the road.

The participants are willing to examine not just the way things have been, but are willing to explore new ways of improving the working relationships.

Each system has much to learn from the other systems. The cooperative agreement must be developed in an atmosphere that goes beyond the prior relationship between the participants. Instead, all participants must explore new ways to improve working relationships.

The participants are willing to be creative and persistent.

For the process to succeed, the participants must be willing to be creative and persistent. The process will undoubtedly have frustrations and difficult times. Participants must try creative solutions such as the provision of food at meetings, changing the location of the meetings to meet at the office of problem participants, starting meetings with an invocation from a tribal elder, etc.

The participants are willing to share the burden.

Participants must also be willing to share the burden by sharing resources,



training, technical assistance and the limited available funding.

All agencies are allowed input into agreement drafts prior to finalization.

There are many ways to develop a cooperative agreement. It may not be necessary to have every agency involved in all steps of the process. Some work may be done more effectively when developed by task forces or working groups. However, all agencies must be allowed input into the agreement drafts prior to finalization of the agreement.

The development process anticipates periodic review and modification.

The cooperative agreement will be much more difficult to develop if the final product is viewed as written in stone. Instead, it should be viewed as a dynamic and flexible document that will require periodic review and modification. The review and modification process can even be formally incorporated into the document itself.





Section 3: Practitioner and Participating Agency Roles

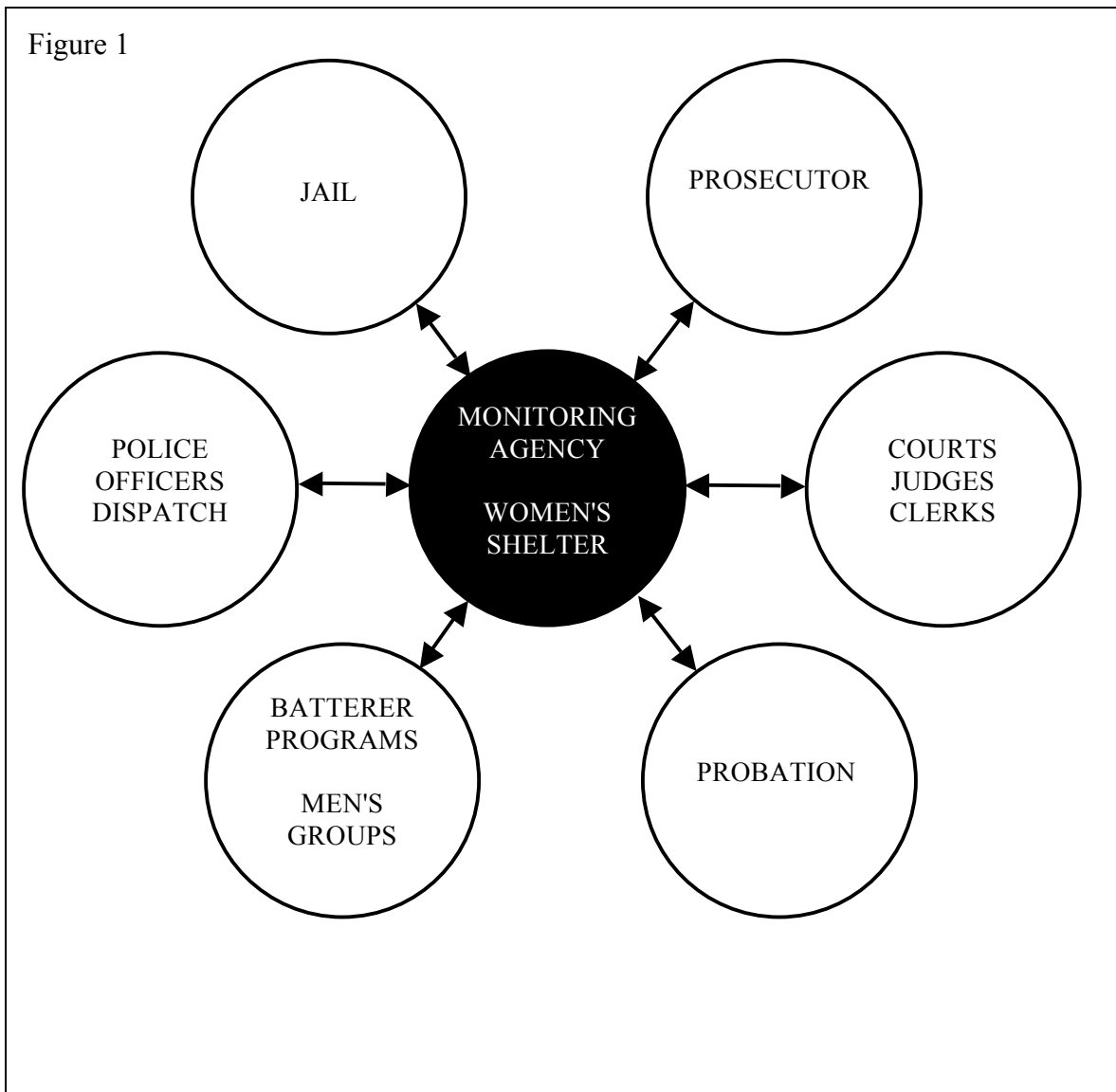
The basic goal of intervention work is to stop perpetrators' violence using a multi-disciplinary approach. However, the CCR team must also focus on ways to provide safety for battered women. It can be easy for the CCR team to get caught up in the circumstances that occurred prior to a violent incident. Each agency involved must understand the crucial focus and limitations of CCR intervention. If the purpose of organizing in our communities were solely to hold meetings and talk about domestic violence issues, we would not create lasting effective change. Because the dynamics of battering include many social, political and historical issues for Native people beyond the scope of most individual agencies, the direction of the CCR team must be clear and concise. Fixing a couple's relationship should not be the emphasis because of the risk of drifting into mediation efforts (see the NCADV *Position Paper on Mediation*, page 116) that compromise the safety of the woman and reduce the level of batterer responsibility. A CCR is designed specifically to hold batterers accountable for their use of violence and to prevent further victimization of women in the community.

Working in coordination with law enforcement officers, local jails, prosecutors, courts and probation officers, the CCR team concentrates on a woman centered response—ensuring women's safety through holding offenders accountable. Each agency will play a role in each case that passes through their respective area so each response should be carefully coordinated among the participating agencies to ensure consistency. This is where each practitioner's understanding of the involved agencies will be important, ensuring that when an individual from one agency works with a victim, they can offer the best and most accurate information of the response or services of any other partnering agency.



A CCR coordinator or monitoring agency acts as a facilitator, addressing the problems and practices of participating agencies and working to address challenges between agencies and institutions. Ideally, the coordinator or monitoring agency should be independent of the involved agencies in order to ensure the focus on batterer accountability and providing safety for women isn't compromised. Working past differences to come together in the spirit of collaboration and cooperation is key to continued, lasting change (see Figure 1). The role of each practitioner or agency within a CCR team follows.





¹⁹ Supra, note 3.



The Role of Re-Education Programs

- Prioritize safety for women.
- Work cooperatively with shelter or advocacy programs.
- Report acts of violence to monitoring agency.
- Assess lethality.
- Focus on changing abusive behavior.
- Teach men who batter alternative behavior.
- Have consequences for breach of contract.

When making referrals to a counseling program or when developing a men's program, be certain groups specifically address the issues of violence in relationships and ingrained societal sexism. Groups can easily become anger management classes. Anger management alone falls short of addressing the attitudes and beliefs that give batterers permission to use violence to control their partners. Why batterers feel they can use violence and have a determined right to exercise it needs to be addressed. Consider using a curriculum or service provider operating from the philosophy of violence as a learned behavior. If the community believes men are not born inherently violent, but rather are molded by societal beliefs and structures within the greater community, it is then possible for all people to be cared for and nurtured into responsible adults who do not use violence in their day-to-day life. This belief makes change possible and creates a place where men can learn to change. The most successful re-education programs integrate traditional ways and language reflecting Native beliefs into their teachings.

The connection between counseling or education programs, advocacy programs and the CCR team is vital to maintaining a consistent level of accountability for men ordered into the program. By



providing regular updates to the other participating agencies, the education or counseling program gives judges, prosecutors and probation officers information showing offender compliance or the lack of compliance with court sanctions. With the consent of the battered woman, group facilitators can develop a fuller picture of the dynamics in the relationship. However, the involved agencies must always be conscious of how they use the information provided by the partners of the men in the group as it could cause an escalation of violence. Additionally, it is very important to have an advocate contact an offender's partner to detail the men's group curriculum and approach before the offender attends. Men attending group sometimes misrepresent material presented in group to further control their partner, for instance, "The group says that you use emotional abuse to control me. It's your fault that I'm violent." Contacting a woman first prevents her from being further manipulated into thinking or feeling that she is responsible for the batterer's use of violence.

Other issues to consider when implementing and facilitating groups for men who batter include:

- Statements made by men in group that imply further violence;
- Facilitators or counselors who collude with batterers;
- Issues of racism and oppression;
- Men's appropriateness for groups;
- Sobriety;
- Women's use of violence.

Women's use of violence is an issue faced by group facilitators; group discussion often results in participants contending that women use violence as well. Understanding the dynamics of power and control is vital to conducting effective education groups that uphold batterer accountability.

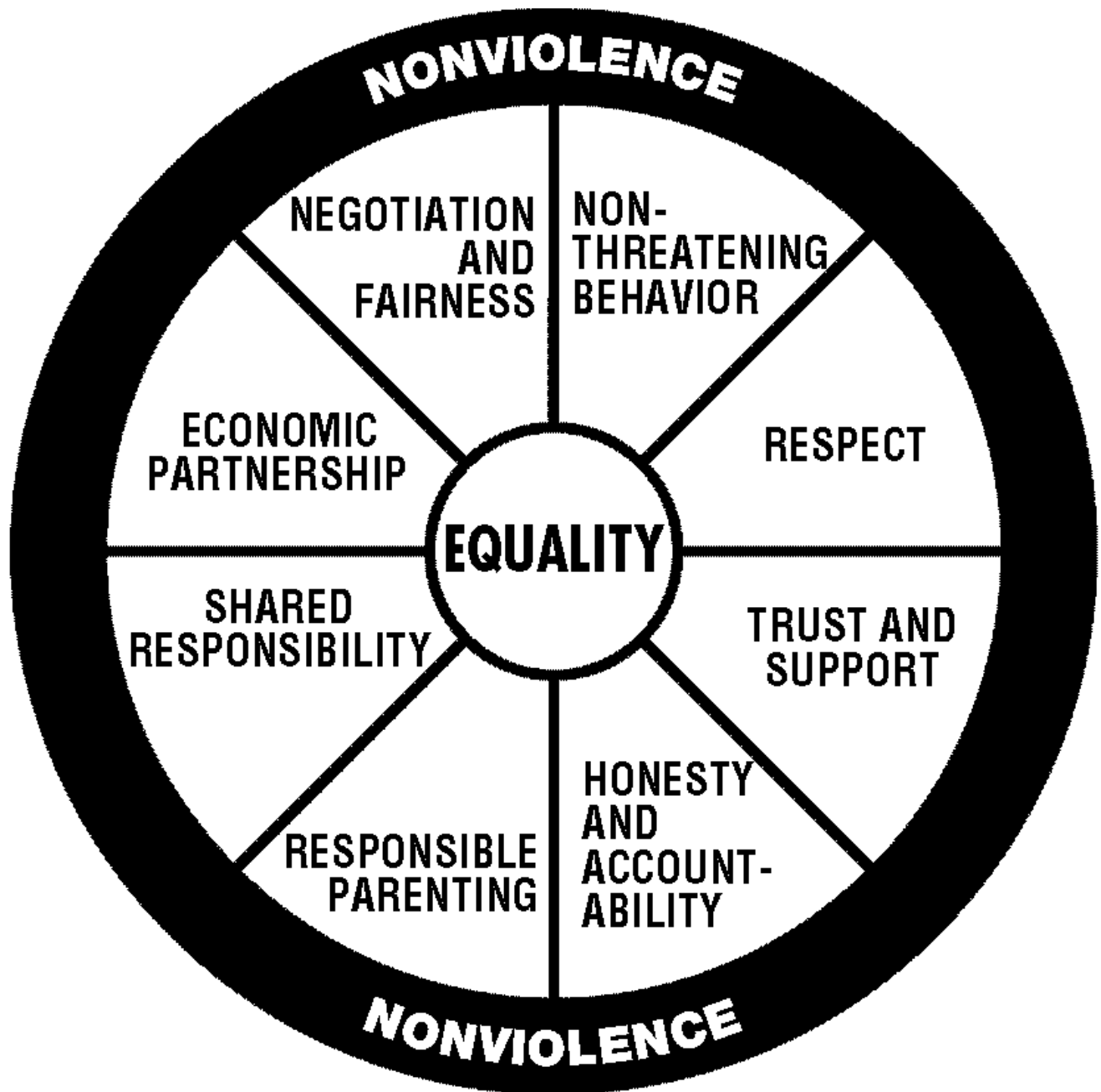
There is difference between a batterer's use of violence to control his partner and a battered



woman's use of violence in self-defense or retaliation. A woman's use of physical force rarely fits the ongoing pattern of coercive or controlling behaviors described as battering.

Many communities prefer to call batterers groups men's re-education classes because the intent is not to cure an individual of violent behavior, but to examine the belief system that uphold a batterer's use of violence. Through examining these beliefs, participants can learn ways to create a relationship with their partner based on equality and respect (see Figure 2).





²⁰ The National Training Project. Duluth, MN.



The Role of a Men's Group Facilitator

1. Commitment to the Coordinated Community Response:
 - a) Battered woman safety
 - Ongoing monitoring for signs of risk and lethality
 - Reports to men's program coordinator and advocate
 - Regular check-in with advocate
 - b) Offender accountability
 - Ongoing monitoring of offender's behavior and group participation
 - Reports failure to meet contract and/or follow rules regarding further acts of violence
 - Regular check-in with advocate
 - Reports to program coordinator
 - c) Community deterrence
 - Emphasizing zero tolerance for abuse
 - Not colluding
2. Support participants' efforts to change controlling and violent behavior:
 - Explore why participants use these behaviors, how they use them, and how they can change.
 - Explore the idea of character, the ethics of their behavior, how they want to live their lives, the kind of partner/father they want to be, and what they want in a relationship.
3. Keep class focused on participants' use of violence, abuse, control and the ability to change:
 - Focus on the participant, his behavior and actions, how they affect others and the changes he wants to make.
 - Shift focus from his partner, the relationship, and other areas of his life to his choice to use violence.
4. Facilitate reflective/critical thinking.
 - Why? How? Who made things this way? How did it get that way? What does it mean to you?
 - "Nature" vs. "social construction" of power and control in relationships (challenge beliefs that say that it is a man's place to be dominant in a relationship, that men are inherently violent, etc.).



-
5. Maintain a compassionate atmosphere that is challenging but not colluding. Support the man; challenge the behavior.
 6. Provide new information and teach non-controlling relationship behaviors.
 7. Facilitate a healthy group process. Let the class do the work.
 8. Seek out and be open to feedback about your facilitation skills.



The Role of Law Enforcement

- Respond rapidly to ensure woman, children and officer safety.
- Conduct interviews with parties separately.
- Arrest if there is probable cause: “a belief, based on officer observation and reasonable judgment, and statements by parties and witnesses involved, that a crime occurred and the suspect committed the crime.”²¹
- Mandatory arrest on violation of protection order.
- Advise the battered woman of her rights and services.
- Write reports on arrests and non-arrests.
- Document past offenses.
- Departmental and individual commitment to on-going training.
- Make police reports available to monitoring agency.
- Write departmental policies/procedures for domestic assault response.
- Coordinate with monitoring agency, probation, prosecution, advocates, and men’s re-education programs to address problems.
- Take an active role in community education efforts.
- Create inter-department policies on officers who batter.

Law enforcement officers are most commonly the first responders to violent incidents, they play a vital role in ensuring the immediate safety of women in the community. In addition to securing a scene, officers investigate and gather the required evidence that will provide protection for a woman after a violent incident and in the future. Because the police are usually the initial point of contact for a battered woman, the impression they leave her with either encourages or discourages her from seeking further assistance through the courts or participating as a witness in criminal proceedings.

²¹ Supra note 6.



The level of discretion granted to officers to make an arrest or file a report gives them the ability to “screen out” cases based on their interpretation or personal bias toward domestic violence and sexual assault cases. Having sound policies and procedures in place for law enforcement agencies coupled with good training alleviates most negative situations.

The police officer’s role extends beyond that of a first responder. By coordinating with probation, advocates and counseling/education programs law enforcement enhances not only women’s overall level of protection, but men’s accountability. Working with the above agencies and programs can alert police officers to escalating situations, provide information on serving protection orders and/or information that aids in making arrests when violations occur or warrants are issued.

The Oneida Tribe of Wisconsin, in conjunction with Outagamie County prosecutors and Brown County prosecutors, provides a good example of this type of coordination. They have developed a red flag list of high-risk offenders that the courts, prosecutors, and law enforcement utilize frequently. Police officers of both counties use this list when called to a domestic violence situation in order to prepare for officer safety and to have knowledge regarding the possible lethality of the situation. The red flag list contains the offender’s demographics, a picture of the offender, and prior criminal/civil information. These lists also contain minimal information on the victim. Figure 3 is an example page of the Oneida Tribe’s Red Flag List of Offenders.



Current picture of offender placed here.	<u>Red Flag Offender</u>
	Name: _____ Alias: _____
	Address: _____
	Age: _____ Birth Date ____/____/____
	Victims Name: _____
	Distinguishing Marks: _____
	Priors: _____
	Former Address: _____
	Additional Information: _____

Jurisdictional and law enforcement problems plague many Native communities across the country. These range from under funded police departments, isolated and rural locations, dependency on local (city, county, state) law enforcement response, to working with federal investigators, training issues, staff turnover, written and adopted policies and procedures, and police officers who batterer. The ability to coordinate and collaborate with law enforcement varies greatly among various jurisdictions across the country. Prioritizing the needs of your community will keep the task at hand from becoming overwhelming.



The Role of Criminal Court

- Consistently apply laws that hold the offender accountable.
- Allow advocates to accompany women into court proceedings.
- Consider the woman's input.
- Protect the abused party, her children, and family members.
- Mandate education groups as a probation condition for rehabilitating a batterer.
- Provide restitution to the battered woman.
- Issue "no contact" orders and orders for protection to comply with VAWA and Full Faith and Credit provisions.
- Maintain confidentiality of woman's address and phone number.
- Provide clear and consistent consequences for failure to follow orders.
- Order surrender of weapons/firearms.
- Enforce orders of protection violations in a timely fashion to ensure the woman's safety.
- Ensure courtroom safety by providing safe waiting areas for women and separating the perpetrator with assistance from a police officer and bailiff.
- Elevate sentence for second offense or additional violations and convey to community that domestic violence is a serious crime.
- Understand the dynamics and tactics of battering in order to better protect women.



The Role of Civil and Family Courts

- Use clear and concise language.
- Issue “no contact” orders.
- Order psychological testing, completion of batterer’s program as a precondition for visits.
- Order substance abuse evaluations, alcohol screening, parenting classes and mental health counseling where appropriate for batterers.
- Consider sole custody to non-abusive parent until perpetrator completes all court ordered programs.
- Presume batterer should not have custody of the children.²²
- Structure time, method and manner of visitation—No “reasonable visitation” nor “mutually agreeable times” (difficult for police to enforce).
- Consider supervised visitations through agencies or at a location away from abused party.
- Prohibit batterer’s visitation with children that is supervised by his family or friends.
- Order no use of alcohol or drugs in presence of child prior to visits.
- Avoid mediation due to imbalance of power between parties.
- Avoid couples counseling which may place the battered woman in further danger of abuse or retaliation.

Courts systems can be very complicated and complex. For the average person, processing and deciphering the components of the judicial system can be difficult process. There are family courts, juvenile courts, traditional courts, specialized domestic violence (DV) courts, drug courts, appellate courts, tribal courts, state courts and federal courts among others. Fully understanding their differences can be a large task. In addition to understanding the nuts and bolts of the system, an individual’s experience of being processed through the court system must be acknowledged. It is necessary to take the perspectives of women who have been through the system into account.

²² U.S. Congress House Concurrent Resolution 172, 1990.



Issues such as mutual protection orders, couples counseling and mediation need to be addressed in terms of the danger they present to battered women. Additionally, such issues as batterers seeking custody and child protective services removing children from battered women should be examined for the harm they do to women and their children.

Judges set the tone for the level of violence tolerated by the community. Some may be very consistent when presiding over cases. However, this consistency may range from consistently bad to consistently good, while others may direct solely on the laws in place and their duty to determine if a law has been broken. A judge's beliefs regarding domestic violence will influence their tendency to dismiss, order mutual restraining orders, or collude with batterers—all of which seriously impact women's safety and minimize the violence women experience.

In addition to examining the perpetrator's pattern of violence and control, lethality factors must be considered:

- Suicide and homicidal ideation, threats and attempts.
- Escalation in frequency and severity of violent episodes.
- Weapons owned by batterer, threats to use weapons, and recent purchase of weapon.
- Prior criminal behavior or injunctions.
- Mental health issues, including psychiatric history, medication needs, and acute depression.
- Substance abuse.
- Preoccupied or obsessed with his partner.
- Stalking.
- Statements such as, "If I can't have her, nobody will."



-
- Woman pursued while attempting to leave relationship (escalation of violence after separation).
 - Minimizing or denying own behavior and blaming his partner for his violence.



The Role of Prosecutors

- Seek convictions.
- Proceed with evidence-based prosecution regardless of victim cooperation: build cases based on evidence, not victim testimony.
- Subpoena to make testimony of victim and witnesses available to the court, while providing safety for the battered woman.
- Not charging or incarcerating the victim for being uncooperative.
- Provide information to the battered woman and advocates.
- Discourage plea agreements.
- Provide information about the case to the monitoring agency.
- Seek elevated charge for second offense.

Prosecution is essential to providing community safety as well as due process for criminal defendants. A prosecutor's vital connection and coordination with police ensures the safety of women in the community and allows the prosecution to charge and build a case based on evidence. Strong communication between prosecution and law enforcement will aid police in gathering evidence and aid prosecution in obtaining a conviction. It is important to remember that prosecuting cases of domestic violence may ultimately be of more benefit than convictions. Prosecuting such cases sends a strong message that domestic violence is a criminal act and offers the opportunity to educate the community on the dynamics of domestic violence during case arguments in front of the judge and jury.

Prosecutors must also consider victim testimony. Subpoenaing a woman demonstrates that her testimony is the prosecutor's decision, not hers. This can take pressure off the woman but safety considerations must be weighed throughout the prosecution process. A skilled prosecutor deals



with recanting witnesses and is able to proceed without a witness. Charging women with contempt for failing to respond to a subpoena, filing a false report or perjury may further jeopardize the woman's safety, and may negatively affect her decision and the future decisions of other women to seek assistance from the courts. The prosecutor's office must be committed to evidence-based prosecution (if the law permits in your jurisdiction), prioritizing women's safety and ensuring offender accountability.



The Role of Probation

- Pre-trial release agreements.
- Pre-sentence investigations.
- Maintain contact with advocates and/or victims.
- Document prior incidents.
- Record aggravating circumstances.
- Obtain on-going input from re-education programs, victims and advocates.
- Report all violations to the courts.
- Refer all domestic violence cases to the monitoring agency.

Probation officers and probation departments play a vital role in keeping men accountable. They monitor compliance with court orders, serving as a direct link back to the court system. Valuable insight into the lethality of the batter provided by victims and their advocates occurs during the process of information gathering for court proceedings.



Managing Offenders on Probation ²³

- **Convey a message of disapproval about violent and abusive behavior.** Avoid pressure to ally with the violator. Consistently communicate that wife beating is abusive and criminal behavior.
- **Be intolerant about breaking the rules.** Surrender is always possible. Inform offenders of the possibility of revocation; probation is a privilege. Request surrender when violation of probation occurs.
- **Monitor closely and unpredictably.** Men who batter are constantly looking for loopholes—they consider themselves victims. Develop an intrusive and intense supervision plan. Make unannounced calls or visits.
- **Mandate the offender to specialized counseling.** Long-term group counseling is recommended. Individual psychotherapy and family or couples counseling (marriage) counseling are not advised. If available, the offender is mandated to a batterer treatment program that holds abusive men responsible for changing violent behavior.
- **Demand consistent documentation from the batterer treatment program.** Efficient, frequent and brief communication should be provided, including an initial assessment report, monthly progress reports, incident reports, and a termination report.
- **Expect behavior change as a result of counseling.** The man should use treatment productively; the treatment program should not “baby-sit”. The offender should remain non-violent with no threats of intimidation of the partner. The offender should not be disruptive and should comply with program requirements.
- **Develop rapport with the battered woman.** Conduct regular partner contact to assess dangerousness, fear and risk of retaliation. Warn her about dangerousness if this is appropriate. Refer her to specialized resources (shelter, support groups for battered women, etc).
- **Follow-up on additional conditions of probation.** If you don’t close loopholes, perpetrators will use them. If a restraining order is in effect, support the victim’s efforts to have it enforced if the offender should violate conditions to stay away from her or her children, pay child support, follow supervised visitation rules, etc. Check that the offender has completed other conditions such as: surrendering firearms/weapons, attending the batterer treatment program and participating constructively; attending alcohol and/or drug abuse program; staying clean and sober; attending AA or NA; or complying with drug/alcohol testing.
- **Probation revocation/surrender.** If the perpetrator violates probation, the system should attempt to hang on to him until he has one or two violence-free years. Options include:

²³ Supra note 13.



having the offender serve part of sentence, so he is released with time pending; repeating the batterer program after his release; extending probation after release.



The Role of Jail

- Jail holds batterer for a designated amount of time (depending on the community) until arraignment.
- Assess danger to victim by recording threats or comments made about victim during booking and holding.
- Monitor visits with family and friends to prevent collusion with the offender.
- Record threats or admissions made during incarceration in report to the court.
- Not colluding with or advocating for the batterer/defendant.
- Escort batterer from detention, restraining severe offenders.
- Notify victim and/or advocate before releasing batterer.

Although limited resources, such as funding, allow few tribal communities their own jail facilities, when accessible, jails can provide a great deal of information between agencies.

In the Duluth model, the jail serves a very unique purpose. It is instrumental not only in incarcerating the batterer, but keeping a record of threats and admissions of guilt made by the offender while incarcerated. An example from the Duluth model: If a woman is battered and her partner is arrested, the jail calls the shelter to have an advocate visit the woman either at her home or wherever she is located. At the same time, the jail will call the intervention program, the monitoring agency, and have someone visit the perpetrator in jail. The jail will also contact the woman when the batterer is going to be released in order to ensure, to the best of their ability, that she is in a safe place.



The Role of an Advocate

- Advocate for the expressed interests and safety of the woman, and her children, including her needs for temporary housing, transportation and financial assistance.
- Direct the focus to the batterer's use of violence as the primary problem, particularly if the court becomes sidetracked by other factors (alcohol, self-defense and child protection involvement).
- Ensure all women who have been battered/sexually assaulted have 24-hour access to support, accurate information, crisis intervention and other advocacy services.
- Identify the violence perpetuated by batterers, including psychological abuse and the effects of violence on their children.
- Maintain confidentiality as it relates to the safety and integrity of the battered woman and her children.
- Advocate for the battered woman in a way that respects and validates her individuality, experiences, decisions and strengths.
- Request tribal court refrain from court ordering battered women to counseling, mediation or other practices that place them in contact with their batterers, jeopardizing her safety or her children's safety.
- Educate personnel within the relevant systems of the effective responses to violence against Native women as they pertain to batterers, women and children.
- Ask what the battered woman needs and help her attain her basic needs.
- Articulate the safety needs of the woman when she is unable or cannot communicate to the court due to fear or retaliation from the batterer.

Advocates often take on both individual and institutional advocacy. The individual advocate works with individual battered women, helping a woman achieve her personal goals in the legal or other systems. This includes helping a woman consider her options and assisting her in a course of action. Advocacy includes working to address the self-blame that a battered woman often struggles with and helping her understand the effects of being a constant target of her partner's power and control tactics.



Institutional advocacy involves working with institutions (e.g. the legal system, law enforcement, child protection etc.) to change an institutional practice (policy, procedures, protocol) that works against the interests and needs of battered women as a group. These advocacy activities mainly focus on educating systems about the impact of such practices on battered women and their children and encouraging systems to change.



Principles of Advocacy

- Create an image of hope.
- Honor Native sovereignty within the context of safety for Native women. The health and safety of our nations depend upon the health and safety of our women. They are the life-givers, who provide for the perpetuation of our nations.
- Promote the self-determination of Native women experiencing violence by ensuring their freedom to control decision-making processes and determine their own future.
- Relationship: reestablish her humanness.
- Reclaim and establish the status of Sacredness once held by Native women.
- Assist Native women with getting their basic needs met.
- Eliminate compliancy (accepting things the way they are) by developing methods to eliminate internalized and historical oppression.
- Actively confront oppression/subjugation as it pertains to all sectors of society.
- Acknowledge the struggle for human rights of indigenous people begins with protecting Native women.
- Mobilize our communities and change community perceptions about violence against Native women through awareness and education.
- Promote a social justice and social change response to ending violence against Indian women.
- Honor our tribal legacy and incorporate traditional ways of helping and healing from domestic violence and sexual assault.
- Protect women's right to confidentiality and privacy when seeking safety.
- Develop policies, protocols and practices that safeguard battered women and advocates.

An Advocate's Role is to act as the biased supporter of Indian women experiencing violence, advocating for their expressed interests, including safe space and other resources to regain control over their lives. Advocates provide expertise founded on women's experiences within justice,



social service and medical systems, by prioritizing women’s safety and offender accountability in all aspects of advocacy, including maintaining confidentiality.



The Role of Tribal Leaders

- Acknowledge that domestic violence has a major impact on the community, families, women and children.
- Promote beliefs that honor and respect Native women as life givers and caregivers of nations. The future of the nation rests in the secure status of women and their right to live a life free from violence.
- Support the domestic violence advocacy program by allocating resources and acknowledging the work of the staff.
- Challenge the leadership when other tribal leaders commit domestic violence and sexual assault by imposing consequences.
- Prioritize resources that offer assistance to battered women and their children: housing, shelters, and safe home programs.
- Be pro-active in the defense of women by intervening and preventing violence against women by instituting tribal code revisions and protocols that enhance safety.
- Ensure domestic violence training for tribal court personnel, social service agencies, emergency medical services, law enforcement officers, and tribal council at a minimum of once a year.
- Act as a role model to live a violent free lifestyle and challenge the leadership when other tribal leaders commit domestic violence and sexual assault. Impose consequences on such behavior.

Instituting laws and allocating resources set the standard for community intolerance for domestic violence, while directly supporting advocacy programs and community-based efforts help in forming a Coordinated Community Response. Tribal leaders have the ability to get people and programs working together to hold batterers accountable and keep women safe.





Section 4: Monitoring and Tracking

Everything begins with an incident. From the incident on, different agencies react, respond and intervene. A call to the police or sheriff's department involves dispatchers and then the call goes out to an officer who responds to the scene. Next, the officer begins an investigation, documenting the time and location of the incident, the people involved, taking statements, documenting injuries, gathering additional evidence, writing a report and/or making an arrest. When an arrest is made, booking the suspect into jail results in more paperwork being compiled. Depending upon the charges, there may be an arraignment hearing before the suspect is released, a holding period or "cooling off" period and a court date scheduled for a later date. Various criminal and civil hearings may occur, each producing documents. Outcomes can range from dismissals, to plea agreements, to multiple court sanctions. Compliance with such sanctions (completing men's groups, treatment, jail time, etc.) must be monitored. In the event of a re-offense, this process repeats. Each of the above points of intervention usually generate records and associated records. Tracking and monitoring compiles the generated information and identifies points at which perpetrators are slipping through gaps in the system. Tracking can be accomplished either manually or by using computer spreadsheets or databases.

Three important elements of tracking:

1. Data must be obtained from agencies with pertinent information.
2. The information collected must be received, organized, and stored. Information collected for tracking must be accurate, consistently collected, held confidential and stored in a secure place.
3. Relevant data must be provided to each participating agency of the system responding to domestic violence.

An effective tracking system must be paired with strong relationship development between participating agencies such as police departments, probation, the courts and the monitoring agency.



Successful MOU utilization aids in the development of an effective tracking method.

Demonstrating the benefits of tracking cases to participating agencies not only provides better safety for women and greater accountability for batterers but also helps each agency involved perform their role more effectively and encourages their participation. After agencies understand the return, they usually find it easier to create such reports.

Benefits of the tracking system

- Increases attention to women's safety by ensuring practitioners take action on what information is in fact available, and gives practitioners, at critical points of intervention, information about the whole case, not a single incident.
- Holds practitioners accountable to agreed upon procedures and policies.
- Holds offenders accountable to court orders.
- Identifies cases that are stalling or slipping through the cracks.
- Identifies procedures that work against a woman's safety.
- Reveals patterns of possible system bias towards women.
- Provides information for program evaluation and planning.
- Prioritizes cases.

Important information in a police report includes the demographics (describing details) of the offender such as: the name of the offender, age, sex, birth date, distinguishing marks (tattoos, scars), what charges (if any), and a written summary of the incident. Victim information is only collected for the purposes of notification not for monitoring purposes.

Once a police report is submitted, the criminal court process begins. The severity of the incident determines whether it will be charged as a misdemeanor or felony, and in which court (tribal, state, or federal) the case will proceed. Through the court process a number of documents may be



collected for tracking purposes. Court dockets (arraignment/jury calendars and court minutes) are important to tracking because they contain such information as the next scheduled court date, whether the offender was found innocent or guilty, and the criminal sentence. Court dockets also document court personnel involved in the case, an important factor when tracking judges' decisions and/or determining how many court proceedings are dropped or charged as a lesser crime. Additionally, this collection of information is quite useful in gathering statistics on the incidence of domestic violence in the community and the specific responses of law enforcement and the courts.



Sample Monitoring and Tracking Questions ²⁴

1. Are probation officers advocating for a woman's safety at pre-trial release hearings?
2. Are domestic violence cases prioritized?
3. What progress has been made in developing a domestic violence unit in the police department?
4. Is the prosecutor getting better information from advocates?
5. Are judges ordering pre-sentence investigations (PSI) with regularity? Are we tracking this?
6. Are offenders doing jail time or getting ordered into the men's re-education program for violating orders for protection (OFP) in accordance with tribal codes? From the report how few are jailed or are being ordered into the men's re-education program? If so, what is being done to correct this?
7. Are police officers contacting battered women when conducting PSIs? How do we know?
8. Are judges' sentences consistent with PSI recommendations?
9. How many offenders were court-ordered into the men's re-education program in the past year?
10. How many offenders who are on probation re-offended in the past year?
 - a) New police report.
 - b) New arrest.
 - c) Victim reported.
 - d) Was their probation revoked?
 - e) Are we tracking this?
11. How many offenders court ordered into the men's re-education program were suspended in the past 12 months for failure to complete?
 - a) What did the court do?
 - b) If he wasn't revoked or ordered back to the men's re-education program, what did the program do?
 - c) What happened in those cases?
12. How many respondents in OFP court were ordered into men's re-education in the past year?
13. How often did the petitioner request the men's re-education program in her petition?
14. Do we know why petitioners aren't requesting men's re-education classes?

²⁴ Adapted from the Domestic Abuse Intervention Project (DAIP). Duluth, MN.



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15. Are advocates meeting with women after assaults? How many assaults are filed as misdemeanors? As felonies? What is the average time that before contact?
 16. Are emergency orders being signed? Are advocates accompanying battered women?
 17. Is there any discussion about doing some outreach with other agencies?
 18. How would you evaluate the interagency meetings?
 19. What is being done to determine predominate aggressor? What is being done to distinguish between male and female offenders?
 20. Are offenders receiving jail time for repeat assaults in the past year?
 21. Are no-contact orders being enforced by the police department?



Upon the court finding the defendant guilty of the charges, a sentence is assigned for those charges. The judge may order the defendant to jail time, probation, community service, no alcohol or drugs, no contact with the victim, drug rehabilitation or batterer's re-education groups. Probation is a common condition of an offender's sentence. The perpetrator signs a probation contract with the probation office stating the decisions imposed by the court, another document useful in tracking.

As part of sentencing on charges of domestic abuse, a judge may impose attendance at batterer re-education classes on the perpetrator. Batterer re-education shifts accountability to the person responsible for the violence rather than placing the blame on the battered woman. The tracking information provided by batterer's re-education groups documents attendance (attending, missing, excused or unexcused), recidivism, suspensions, termination and completions of the program.

A battered woman may seek an Order for Protection (OFP) from civil court. An OFP does not occur at any point in criminal court process even when a perpetrator has been duly processed. An order for protection placed against a perpetrator for the woman's safety usually states that: the perpetrator cannot be within a stated distance of the woman, cannot have contact with the party seeking the OFP through mail, telephone or third parties. If children are involved, an OFP may contain specifics on visitation and all of the details needed for tracking the perpetrator's sentence. If a perpetrator re-offends against this civil order, he can be brought back to face charges in criminal court for its violation.

Community safety in reservation and rural areas must be paramount in developing and designing tracking and monitoring systems. Safety can be diminished or severely compromised without a system to track lethal and dangerous offenders. Batterers often move from one reservation to



another, going completely unnoticed by tribal courts, police and advocacy groups. More complete and valuable assault statistics begin with better record keeping methods. This leads to policy changes and the development of effective tribal codes. Tribal governments need cooperation from all systems involved in assault cases in tracking and holding offenders accountable.

Conclusion

An effective Coordinated Community Response increases the safety of community members by holding offenders accountable for their actions and providing safety for women. Involved agencies need to communicate, collaborate and work towards this common goal. Agency interaction provides the groundwork needed to identify the gaps that compromise safety and accountability. Evaluating policies, procedures, protocols and practices of involved agencies can indicate where changes need to be made and how to establish consistency within each agency's response. A Coordinated Community Response provides a framework and a method to ultimately strengthen the systems response to violence against women. Each agency that participates sends a direct message to their community—violent behavior is not tolerated. In developing and maintaining a CCR, the community commits to addressing violence against women, working to create institutional change through systems advocacy.





Section 5: Resources—Examples for Discussion

The following section is to be used as a resource for group discussion. Quite often there are questions about what issues the CCR team should discuss and how discussions should be facilitated.

The following articles are on topics relevant to a Coordinated Community Response. Preceding each article is a title page with the topic to be addressed, length of handout, synopsis and a list of discussion questions. The facilitator should review the packet before distribution to familiarize herself with the information to be presented. These articles serve as examples of the information that is available for discussion and the way that these discussions might occur.

In addition to the above stated resources, a sample tribal domestic code is enclosed to aid in creating policies and procedures that will provide the legal foundation for your Coordinated Community Response to domestic violence.



Topic to be Addressed: Collusion

Article Length: 5 pages including cover

Synopsis: Collusion is any act that intentionally or unintentionally supports bad, deceitful or illegal behavior. In terms of battering, it is any act that discounts, condones or ignores any of the tactics that batterers use to maintain power and control over their partner. The results of colluding are increased danger to the woman, her children, family and friends. Collusion means the woman must now protect herself, her children and relatives from the batterer, as well as those that collude with him. In effect, she is re-victimized as seen through an example scenario.

Questions for Discussion:

1. How does collusion show itself in your community?
2. How would your community react to the scenario of Robert & Mary?
3. What are the problems Mary is facing?
4. Are there resources made available for her? How? If not, why? What are the limitations?
5. What other instances or examples of collusion exist in your community?
6. Are there policies, procedures, or sanctions in place that protect women from collusion?
 - a. If so, what are they? Picture them through the eyes of a battered woman. How do they assist or endanger her?
 - b. If not, how could you develop them? What steps could you take? Picture them through the eyes of a battered woman. What problems might you face? How could the policy be used as a tool for further victimization?
7. What are the consequences for Robert and his extended family in your community? Are there legal ramifications for what they do?
8. How would the battered woman report these incidents? How seriously would they be taken? How would they be documented?
9. What are the steps you could take to strengthen your community and protect women from the dangers of collusion and re-victimization?



Collusion

Violence by extended family is a widespread issue faced by battered Indian women. This article focuses on helping families identify collusion and identifies some steps advocates can take to make women safer.

Collusion is a dangerous, stressful, and fearful situation for a battered Native woman and her children, especially in Indian communities where large family ties are strong and communities are small. In Indian communities there is little or no confidentiality. Most homes on the reservation are equipped with police scanners and when a domestic call is made, within a few minutes the entire community knows what is going on. Collusion allows the batterer to reinforce his use of abusive and violent tactics, and makes him much more powerful in controlling his partner. The batterer manipulates friends, family and systems to help him exert complete control over his partner. The abuser's manipulation tactics center on making the woman look like a bad wife and mother, and making it seem as though she is to be blamed for the violence. This results in the creation of barriers between the victim and her extended family and the elimination of support resources and safe places battered women need. When those she needs to call on for help and support collude with her abuser, they allow her to be abused further. In addition, she's at high risk of being killed when she tries to leave. The lethality of domestic violence has become an everyday news item across the country; women are killed by husbands, ex-husbands, boyfriends and ex-boyfriends as they leave or after they have left the relationship.

Imagine this: I've just been assaulted by my husband, the police are called, they get him out of the house, and a few days later his sister and his female cousins stop by and harass me for calling the police on him. A week later, I see them at the community center, they give me some mean and dirty looks; I run into them at the store and they intentionally bump into

IDENTIFYING FAMILY MEMBER COLLUSION

Traditionally, as Indian people, we always looked out for the elderly, the women, children, the sick, and the weaker members of our communities. Today many of us don't do this. We place the blame for domestic abuse upon the woman. We indulge in victim blaming or we see the batterer as the victim. For instance, when an abuser cooks a meal or sheds a tear when missing his children, his family and friends often empathize with him and instead of seeing him as a perpetrator of violence; they see him as a victim. Family members and friends who feel sorry for the abuser are allowing themselves to be manipulated by him into becoming colluders.

When a family member is abused, we must ask ourselves, whether we step in and say that such behavior is unacceptable, or whether we tend to look the other way, thinking it's not our place to say anything, believing they will work it out for themselves.

What if the abuser is your son, brother, or uncle? You may find yourself allowing him to beat his wife, girlfriend, ex-wife or ex-girlfriend by saying, "it's her fault, she should have ...", or "he wouldn't do this if she didn't..." Do you threaten her; do you enlist women relatives or friends to threaten her as well, to beat her up, stalk her, and/or harass her?



Mary and Robert have known each other since grade school; they have been together for about four years and have two children, ages 2 years and 3 months. They have had arguments and fights and separated a couple of times. Robert's family has interfered from time to time, always taking his side. He hit her and pushed her and caused her to fall and break an arm. His family said she deserved it; she should have left him alone and stopped bitching at him all the time. Mary has had two Orders of Protection against Robert, but has always dropped them. The last order she got, she was threatened by his family members, they went to her home, they called her, telling her she better do this or else.... So out of fear she dropped the OFP. In the early days of their relationship, a cousin and his sister had jumped her and beat her, because they thought she was mean towards

Extended family and friends colluding with the abuser is a very big problem for battered Indian women. Far too often, family and friends of her abuser help violate her more. The following is a small group exercise that allows participants to critically analyze ways in which family members collude.

DON'T MESS WITH MY FAMILY/ASSESSING FAMILY MEMBER COLLUSION:

Choose one of the following topics for small group exercise/discussion:

1. "Blood is thicker than water." What does this mean to you?
2. "Keep up with the Jones." Is there rivalry between your family and another?
3. "Family Secrets." Keeping the family circle closed, keeping others out.
4. "Family is Untouchable – Powerful in community."

Discuss the strengths and weaknesses of the chosen topic. Ask participants to look at how their family interacts with each other and then discuss how they interact with others.

Collusion happens in the best families. It happens when family ties are very strong, and family members are very devoted to one

another. Collusion means you have each other's back no matter what. Even if a member of your family has committed an act of violence or a crime, the family will lie, threaten, blame, post bail, or stay tight-lipped about the incident. The family will not make that family member responsible, or hold them accountable for their actions and behavior; there are no consequences. On the other hand, if someone outside the family commits a crime or is violent against a family member, then the scenario changes. The family will then come together and become much more aggressive in dealing with the outsider.



HOW CAN AN ADVOCATE HELP A WOMAN FACED WITH COLLUSION AND/OR VIOLENCE BY EXTENDED FAMILY MEMBERS?

Some suggestions are:

- Help her identify what collusion is and how it affects her as an individual, and the impact it has on her family, her community and society.
- Seek a safe place with her, a shelter.
- Talk to her about obtaining an Order for Protection.
- Tell her the importance of documenting any harassment, stalking and threats (writing down the date, time, place, and who was involved). Make a police report.
- Talk to her about joining a women's support group. These new friendships will give her support, and encouragement and other members will be there for her.

CONCLUSION

When friends, family and /or systems and institutions collude with the abuser they hold the abuser's pattern of violence in place. Only when such collusion is addressed and stopped, will the abuser will be held accountable. Violence should not be tolerated at all. Family and friends who harass, threaten, stalk, and physically assault the battered woman think that they are showing their support and love to their son, brother, uncle, friend, cousin, by their actions, but their actions have also been abusive. Their actions are not usually seen and identified as abusive, and if their behaviors are addressed, there will be resistance and denial by those family members. They have lived and practiced the value of "family ties" for so long, that even when a family member is clearly abusive, they will still be devoted and blindly so. Many times this devotion to family is so blind, that the abuser may support his female relative when she is abused by her partner, but finds that he feels justified in his mind to abuse his own partner.

A battered woman's safety and holding her abuser accountable must be the focus of the family and the community. A battered woman's life is always on the line from the moment she awakes to the time she crawls into bed at night. Isn't the sacred gift of life more valuable than allowing an abuser continue to abuse in the name of family ties? Where are our priorities?



Topic to be Addressed: Justice and Healing

Article Length: 4 pages including cover

Synopsis: This is a story of a battered woman told by an advocate she came into contact with. It deals with the violence she experienced and her journey through the criminal justice system. This is an example of what happens when the criminal justice system works and a woman can begin the healing process.

Questions for Discussion:

1. What parts of various institutions did Noodin come into contact with? In what ways did they meet her needs? In what ways did they not meet her needs?
2. What were the strengths of the system Noodin was operating in?
3. What were the negatives of the system Noodin had to go through?
4. How does the system react?
5. How do their reactions make Noodin feel? Why is this important? What does Noodin feel personally throughout this process not just in the criminal setting?
6. What would Noodin's journey be like in your community?
7. What are your community's strengths in such a case?
8. What are your community's weaknesses in such a case?
9. Are there measures to prevent Noodin from having such an experience?
10. Although this story ends on a positive note of healing, how could it be used as a tool to further hurt battered women?
11. Many women don't wish to go to court. Why? What is going on in their lives? (Be careful to avoid victim blaming). What might others be saying to her?
12. What does it mean to blame the victim?



**Justice and Healing:
How the Judicial Process Can Aid in Healing Women**

**By Babette Sandman- Indian Women's Resource Advocate/Mending the Sacred Hoop,
Duluth, Minnesota**

Luke* came back to Minnesota after his release from prison in California. What brought him here or why he was in prison remains unknown. We eventually learned that his brother is a white supremacist, and that he had beaten two women from Fond du Lac who were afraid to press charges. Unfortunately, this information wasn't commonly known when he began establishing a relationship with Noodin Ekway (Wind Woman)*, a Native woman from the White Earth Band of Ojibwe who was residing in Duluth. Luke had good manners and one could say he was a "perfect gentleman". Noodin was comfortable with this friendship. He began to hang out at her place, coming and going with ease.

On March 7, 2000, Noodin was babysitting her neighbor's two-year-old and four-week-old baby boys. A fifteen-year-old visitor watched the boys as Noodin took a short nap on the couch. Suddenly Noodin was grabbed off the couch and forced to stare into the intense, angry eyes of Luke. "Why do have n-----s in this house?" He was referring to the African American children Noodin was babysitting. He began hitting her, punching her in the face until she felt her face "explode". Blood was everywhere.

"Now I'll have to kill you because I'm on parole!" He hit and punched her face some more. The fifteen year old tried to help Noodin, only to end up getting hit too. "Is this a nightmare, a bad dream?" Noodin thought. "This can't be happening...."

Noodin barely remembers the ambulance ride to the hospital. She would need surgery to reconstruct her face, especially her nose. The doctor stated that it appeared Luke had tried to push broken fragments of bone from Noodin's nose up into her brain, but that a bone lying sideways had prevented him from killing her. Noodin had footprints all over her body from Luke's steel-toed boots. She endured three surgeries on her face.

Noodin had never experienced violence before. She was totally traumatized. She saw Luke standing in the distance, walking down the street, everywhere she went – he was there. Noodin knew he was incarcerated, she would call to make sure, but she could still feel him around her like a dreaded darkness.

Noodin worked hard to rid herself of the feeling of surrounding darkness that was a constant reminder of that March day when she took a short nap on the couch. She would submerge herself in a bathtub full of warm water and burn sage, hoping that the purifying medicine would wash away the darkness that brought Luke's presence so eerily near. She also called upon her strong support network of advocates and friends that stretched from Duluth to Fond du Lac.

Nothing, however, seemed to shake the dark feeling that haunted her every day. It was a constant trauma for Noodin as she watched Luke represent himself in court and felt her rights as a crime victim shrink away even as he seemed to gain rights as a citizen accused of felony assault.



On April 8, 2001 Noodin attended Luke’s sentencing hearing, prepared to give her victim impact statement. She had lived in a traumatized state for over a year, filled with outrage, fear, and a lingering darkness. Noodin had spent every evening for the past year, one month, and a day trying to wash the trauma of violence away. Finally, she was standing strong and alone in the courtroom before Judge Oswald, the Victim Witness Coordinator, the Prosecutor, the Defense Attorney and Luke. The call came so late in the day about the decision to go ahead with the hearing that Noodin had no time to gather her advocates and other support persons. Noodin had to run to the courtroom as it was already after 4:30. She stated what had happened to her and the tremendous impact that Luke’s violence had had in her life. She had Judge Oswald look at the photographs of her face and her body, demonstrating the severity of the violence she suffered. She addressed the court and she directly addressed Luke with her truth, her rage, and her bewilderment, asking, “WHY? How could you do this to me!”

Judge Oswald looked at the pictures and stated, “This is the most heinous crime I have ever seen!”

Luke was charged with 3rd degree assault against Noodin, as well as assaulting a guard while he was incarcerated and awaiting trial. Luke would spend the next four years and one day in Stillwater prison. Luke was also the first person to remain incarcerated for one year, one month and a day in St. Louis County.

Judge Oswald continued speaking to Luke, “And when you get out and Noodin so much as glances up and sees you in the distance, she just has to call us and you will go directly back to Stillwater!” Noodin left the courtroom with lifetime protection.

That night Noodin sank into the warm waters of her bathtub as she had done for the past year, one month and a day, reflecting on the sentencing hearing. She had never felt believed by any of the court personnel until now. Noodin believes, and she wants other women to know, that it was the graphic nature of the photographs she showed the Court, photographs that visibly showed her severe injuries that made a difference to the Judge. Noodin felt as though Judge Oswald quietly told her, “I believe your story. I believe you were attacked, and now I am going to give you justice and lifetime protection.”

Suddenly she felt like something was telling her to open her bathroom window... and so she did. Noodin watched the dreaded darkness leave her body like a dark shadow gliding out into the night. It was the healing she had sought after for one year, one month and a day.

As an advocate I have often heard attorneys say that the word “healing” does not belong in the courtroom and that women should not come to the courthouse expecting to start the healing process. However, we as advocates know this is not the experience of most women. Every bit of this story of Noodin is true. I told Noodin’s story because I believe her story should be the case for all women. Our court system needs to acknowledge the impact our wounds have on our physical, emotional, intellectual, and spiritual lives as we maintain our homes, care for our families, and work our jobs. Wounded women in our community must seek the healing so desperately needed to counteract the devastating effects that domestic violence has had on us. The first step we take toward the profound healing we deserve is in the courtroom, beginning with **justice**.

According to Webster’s New Riverside Dictionary (eleventh edition), *justice* is “the principle of ideal or moral rightness, the upholding of what is right; fairness; the administration of law; a judge”,



and to *heal* is “to restore to sound health; to set right; remedy”. When we come into the courtroom we expect the “upholding of what is right” and we believe that this happens through the “administration of law”. We are looking for a remedy to the violence that has been done to us, and we believe the criminal justice system will “set it right”. Give us justice, set it right, and then you have given the women in your communities the remedy needed; you have set them on the path of healing. The ripple effect of justice and healing will be carried to every woman/victim in our community, and will pass from them through the children, and into the next generation. Justice holds those who commit acts of violence accountable for their actions and is the first step toward healing. Noodin’s story holds out hope for the possibility of healing and justice for all women. Judges hold the power to provide healing in our communities through justice...they just need to use that power.

**Names have been changed. It was a windy day when I began to write this story thus the name Wind Woman. The victim chose the name Luke (although she wanted to use the name Lucifer).*



Topic to be Addressed: Right to Confidentiality

Article Length: 7 pages including cover

Synopsis: This article focuses on confidentiality and what that means when a community deals with battered women. What are the issues that must be addressed? How can we ensure a woman's safety? Strategies for ensuring confidentiality are discussed: privileged communications, nondisclosure laws, and various policies and procedures.

Questions for Discussion:

1. What does confidentiality mean with regards to your community?
 - a) Break it down into the different roles within the group.
 - b) What did you learn from discussion from others in what confidentiality means to them?
2. How does gossip impact your community?
 - a) Think about examples from your community and the person(s) who have been involved.
 - b) What was the end result? What happened to the people who were subject to gossip?
3. What policies and/or sanctions do you have to protect victims? Are they enforced? If so, how? If not, why? What are the limitations?
4. Could someone subpoena an advocate to testify against the victim? Why or why not?
5. What do you consider to be a confidential matter? To whom?
6. How are cases involving domestic violence handled? Does confidentiality become secrecy? Distinguish between the two.



Right to Confidentiality: A Key to Safety for Native Battered Women

By Peggy L. Bird, Esq.

The safety of Native women who have been battered or sexually assaulted is of utmost concern for advocates, law enforcement, court personnel, prosecutors and all who come into contact with them. A key step in providing safety for Native battered women is to actively ensure the confidentiality of information provided by Native battered women especially information about their identities and whereabouts.

Native communities these days are not well known for their ability to keep information confidential. The “Indian telegraph” (also known as “gossip”) is often the primary way that news about events and information about people in an Indian community is spread and broadcast so that “everyone knows what everyone else is doing.”

Traditionally, the “Indian telegraph” or passing information by word of mouth was the primary means of spreading news and information in a Native community. Storytelling was the way in which values and lessons were instilled and passed down from generation to generation. As a result of various oppressions (Spanish, French and American invasions in Indian country, etc.), the effectiveness of the oral tradition as a way to teach positive values and behavior began changing so that Native people began learning how to talk about each other, to gossip, rather than passing down values and lessons.

We can make changes in our communities around this type of behavior by upholding the confidentiality of Native women who are battered when they come to us seeking safety, security and protection. Some changes may be easily made through enactment of codes and laws. Others are not so easily made, because they are social changes that take time to evolve. It takes time for people to (1) become aware of what they are doing, (2) to understand how the importance of maintaining the confidentiality of battered women is directly affected by what they do, (3) to make changes in their own behavior, and (4) to take the necessary action to ensure the confidentiality and safety of Native battered women.

Strategies for ensuring confidentiality:

1. ***Privileged Communications***

First, what are “privileged communications”? Privileged communications are those communications between certain people that may not be brought into the public light, for instance, into court. Under U.S. law, one of the privileges widely recognized and established under common law was that of attorney-client, meaning that communications between an attorney and his/her client were privileged and those communications could not be brought before the court or disclosed to anyone. Indian nations may look to their own common law, which consists of the laws and rules derived from their customs and traditions or from their tribal court decisions to see whether there were any types of privileges in existence traditionally or whether privileges have been created by court decisions. For example, it may have been customary in situations where people’s lives were at stake (for example, when enemies were attempting to locate the rest of the tribe by torturing someone) that communications and information would not be revealed or violated. There may have been an overall understanding in the Indian community that people could trust each another to



ensure the safety and survival of the community. This type of understanding created a privilege that was upheld by all in the community.

Indian communities may create a statutory privilege for communications between battered women and advocates based on the need to ensure the safety and survival of women in the community. Battered women are in need of safety because in many instances they are running for their lives. The release of information about their whereabouts, their identities, their children or their lives may potentially lead to the batterer either finding them and killing them or to the batterer finding them to continue the battering. Through enactment of statutes or laws stating that communications between battered women and advocates are “privileged”, Indian nations will protect the confidentiality of battered women and will be taking huge strides toward ensuring their safety and the very survival of the Indian community.

Indian nations also have the option of looking to their tribal courts to create privileges that will ensure the confidentiality of battered women. Judges have the ability and authority to issue opinions and make decisions in these matters whenever advocates and/or prosecutors raise them in court. Advocates and/or prosecutors should be aware of these opportunities for assisting the judiciary to issue decisions that uphold the confidentiality of battered women, uphold the privilege of their communications and that prohibit the disclosure of information to ensure the safety of battered women.

2. *Nondisclosure laws*

Indian nations also have the option of creating and enacting their own laws to specifically prohibit the disclosure of information obtained in communications between advocates and battered women. These nondisclosure laws or statutes go hand-in-hand with the laws creating privileges and are useful as tools for educating the tribal council about the importance of maintaining and respecting the confidentiality of such communications. With nondisclosure laws or statutes, the information provided by a woman who has been battered or sexually assaulted is kept confidential and may not be disclosed in court or any other forum unless the woman consents to the disclosure of her information.

3. *Policies and procedures*

Battered women often come in contact with many tribal agencies and programs in their search for help and safety. Information about a battered woman is obtained whenever she seeks a protection order, whenever she calls the police, or goes to court, whenever she applies for housing, financial assistance or employment, whenever she enrolls her children in school, obtains a post office box or goes to the hospital/I.H.S. or local health clinic. All of this information has the potential of being revealed or disclosed unless the various agencies or programs take steps to put policies and procedures in place to recognize the need to protect confidentiality. The nondisclosure of information should also apply to the tribal council members and tribal administration as well as tribal agencies, programs, etc.

Today people are able to access most anything through the Internet. Such technological advances increase the danger that information that should be confidential can be released to the public. . Through an awareness of these potential dangers and the adoption of procedural policies, staff training, strict adherence to policies and procedures followed by reviews and internal audits of those policies and procedures, the safety of battered women may be ensured by holding her information confidential, secure and in trust.



Confidentiality for Victims of Sexual Assault

Confidentiality concerns for victims of sexual assault are affected by the goal of the criminal justice system to prosecute the offenders. Advocates need to assure women who come to them for assistance that they will do all they can to keep the woman's information confidential. If the advocate is employed by either a prosecutor or the court, the advocate should be prepared to inform the woman who has been sexually assaulted that any information she provides has the potential for being used in court for prosecution purposes unless the tribal code or statute explicitly protects her information. This type of disclosure by an advocate will provide the woman with the option of deciding whether or not she will go forward and cooperate with the prosecutor or district attorney.

Concluding Remarks

When law enforcement, the courts, prosecutors, advocates and other members of the criminal justice system can honestly tell a battered woman that they will protect and preserve the confidentiality of information she provides them, we will be making true strides toward ensuring her safety. Through enactment of laws, statutes and policies, the various tribal agencies and tribal programs will also be taking steps to hold batterers accountable for their actions. This accountability was traditionally in place within each Indian community as we upheld the value of respect for each other and realized the sacredness of Indian women. Those values and realizations need to be more than words; we need to live them, to put them in practice so that they are once again the reality of our worlds where we are all related.

Resources:

Manual: Protecting Confidentiality of Victim-Counselor Communications, by Lynne A. Marks and Susan H. Rauch (1993) [often referred to as the "Confidentiality Manual"]. This manual is on file with every state domestic violence coalition. It was distributed by the National Center on Women and Family Law and is being revised and updated.

Report: "Report to Congress: The Confidentiality of Communications Between Sexual Assault or Domestic Violence Victims and Their Counselors, Findings and Model Legislation", U.S. Department of Justice (December 1995)

Article: "Recognizing and Protecting the Privacy and Confidentiality Needs of Battered Women" by Joan Zorza, Family Law Quarterly, Vol. 29, No. 2, Summer 1995.

Brochure: "Confidentiality, Cornerstone of Safety for Native Women who are Battered" by Brenda Hill, Sacred Circle (1999).



Topic to be Addressed: Mediation

Article Length: 5 pages including cover

Synopsis: It is the position of the National Coalition Against Domestic Violence that mediation is never appropriate between parties where battering, either psychological or physical, has occurred. Additionally, it may not be appropriate for women in cases where no abuse is present. Mediation is then defined and their position supported.

Questions for Discussion:

1. Define mediation in your own terms.
2. Define mediation in terms of your given profession.
 - a) Are there any differences in definitions? If so, what?
 - b) Why do they exist?
 - c) What do these differences or similarities mean in regards to battered women?
3. What does the process of mediation assume?
4. Why is the mediation not possible in most cases and particularly with reference to domestic violence cases?
5. List at least three limitations of mediation.
6. Why might a battered woman agree to the means of mediation?
7. Why doesn't mediation reduce the amount of cases for the court?
8. Does mediation produce more satisfying results for the involved parties? Why or why not?



NATIONAL COALITION AGAINST DOMESTIC VIOLENCE (NCADV)
POSITION PAPER ON MEDIATION

It is the position of the National Coalition Against Domestic Violence that Mediation is never appropriate between parties where battering, either psychological or physical, has occurred. Additionally, it may not be appropriate for women in cases where no abuse is present.

Mediation-n. 1. The act of mediating; intervention. 2. The state of being mediated. 3. Law. The attempt to bring about a peaceful settlement or compromise between disputing nations through the resolve or settle (differences) by acting as an intermediary agent between two or more conflicting parties. (The American Heritage Dictionary, Second Edition, Houghton Mifflin Company, Boston, MA. 1985.)

“Mediating, in which an outside helps family members to resolve their own disputes, has emerged as a particularly appropriate technique for resolving conflicts family members cannot settle themselves.” (Is mediation appropriate for low-income clients in family law cases? PBI Exchange (ABA) Linda Singer, Page 10, Summer, 1990.)

Mediation proponents assert that mediation is friendlier, less destructive to family relationships, cheaper, reduces court overload and has greater user satisfaction than adversarial attorney settlements. Most advocates for mediation recognize that domestic violence cases should be excluded from the mediation process.

“In certain situations, such as those involving people with mental disabilities, emotional dysfunction, retardation, or physically abusive relationships, mediation may not be appropriate.” (Divorce Mediation-How to Cut the Cost and Stress of Divorce. Page 23, Diane Neumann, Henry Holt and Company, Inc. New York, NY 1989.)

If domestic violence has occurred, the interviewer should not accept the case for mediation, but should refer the parties to court or to a domestic violence agency, with certain exceptions.” Domestic Violence Guideline for Application of Domestic Violence Policy, Mediation Network of North Carolina 5/18/89.

The basic premise of mediation is that disputants come with equal bargaining power and will negotiate in good faith. There is also the assumption that the presence and skill of the mediator will be able to provide a balance to any inequality of power that exists. In cases where abuse has occurred, equal power is not a possibility. Batterers will use coercion, threats and intimidation to gain the desired outcome. Mediators are not trained to recognize the signs indicating the presence of violence in a relationship, and, as a result, the safety of the battered woman and her children become negotiation points. Safety is a right and is not negotiable. Even if recognized by a mediator, their position of “neutral” intermediary will not allow them to advocate on her behalf. Batterers do not negotiate in good faith, and do not feel bound to their agreements. Mediation is not legally binding, and failed mediation is routinely referred back to mediation. This process reinforces the battered woman’s experience that she is powerless and the legal system will not help her.



The use of mediation implies responsibility by the victim for her own victimization, and does not hold the abuser accountable for the abuse. The mediator, however skilled, cannot adjust negotiations to counter the fear and possibility of reprisals. The mediator may be involved with the two parties for an hour or two, and can not guarantee safety for the victim once she leaves the mediation session. As a result, the battered woman may bargain away her rights to prevent the batterer from harming her or her children. Most battered women have been so isolated by the abuser that she is not aware of her rights and may give up more than is in her or her children's best interest in order to reach an agreement. The experience of a battered woman may have been that her "rights" are unenforceable, and therefore not rights. Even when mediation is chosen, and not court mandated, battered women feel pressured to agree to a settlement.

Mediation initially may appear to be less costly than litigation. The fees are much lower than attorney's fees, and not as time consuming. A battered woman may be pressured into choosing mediation based on these reasons. The end result of mediation settlements, however, seems to negate these points. Mediators are unlikely to be trained in the complexities of public entitlement law, unlikely to understand tax and public assistance implications, unlikely to be able to value assets, division of property, support and debts, or be aware of consequences for immigration status. Mediation cannot insure full disclosure, prevent dissipation of assets or provide temporary relief. Mediation is a private agreement and therefore is unenforceable and unappealable. Given these factors, many women agree to settlements that result in much lower awards for child support, alimony, cash settlements and division of property. In addition, there is a higher rate for joint custody agreements as a result of mediation. These generally provide less actual sharing of childcare responsibilities with lower child support awards.

The theory that mediation reduces court overload is not correct, because most family law cases are not contested and the percentage reaching trial has diminished. By forcing women into mediation we are creating a two-tiered legal system. One system for those who have money, and one for those who don't, predominantly women and children. Due to this pressure put on the battered woman to use mediation, and the lack of control mediation has over the abuse, this interjects the cycle of violence into the legal system, and continues and condones the abuse battered women experience. For women to be adequately represented, they must have an advocate during the legal proceedings.

The assertion that mediation has greater user satisfaction is erroneous. Women in general are less likely to be satisfied with the results of mediation, and most battered women compare the process to being abused. "Overall, men were more satisfied and women were less satisfied with mediation than others of the same gender who were similarly situated and chose to litigate. One recent study of attorney-represented participants in voluntary custody and financial mediation confirmed that most of the increased satisfaction created by mediation was experienced by the fathers..." (Mediation-A Guide for Advocates and Attorneys Representing Battered Women, Page 72, National Center on Women and Family Law, New York NY 1990).

Because most of our systems still collude with violence in this country, and especially in the legal system, women cannot approach mediation from an equal bargaining position. Mediation only seems to exacerbate the power imbalance as it pressures her to compromise while providing no avenues for protection of her or her rights. Adequate protection for battered women and their children is not available; therefore mediation cannot provide safe or fair solutions when family violence is involved.



-Written for the National Coalition against Domestic Violence by Rita Smith



Topic to be Addressed: Lesbian Battering

Article Length: 7 pages including cover

Synopsis: This paper is part of a lesbian battering intervention project. Included are: the dynamics of lesbian battering, myths, similarities and differences in the dynamics of domestic violence in lesbian relationships and a heterosexual relationships, a checklist for shelter programs, and suggestions to make your program ready to assist battered women who are lesbians.

Questions for Discussion

1. Name something that you previously hadn't thought about or it was a new concept when reading this article.
2. What are a few myths about lesbian battering? How do these pose a problem?
3. What are some similarities between lesbian and straight battering?
4. What are some differences between lesbian and straight battering?
5. What might hinder a battered lesbian from leaving a relationship or seeking help?
6. What would it mean if that same woman were not "out"? How does that change the situation?
7. What if she had children? What if these children were legally considered her abusive partner's?
8. How do you determine predominate aggressor?
9. How would you reach the battered lesbians in your community to let them know that services were available?
10. What resources are available for someone seeking help?
11. How does confidentiality fit with regards to lesbian battering?
12. What obstacles do you face in policy and law when helping battered women? How can they be changed? What kind of discrimination is inherent in the law itself?



Lesbian Battering Intervention Project

What we know/believe about lesbian battering?

- No lesbian deserves to be battered.
- Battering/abuse is unacceptable behavior.
- This is an imbalance of power in battering relationships.
- To stop or prevent battering we need to know what the root causes are.
- It is not necessarily true that battered lesbians have a history of abuse.
- It may be true that lesbians who batter have a history of abuse.
- Lesbians who are batter are more difficult to confront.
- Lesbians who are battered do not have as many resources.
- Lesbians have a different investment in not acknowledging violence.
- There is reluctance in the lesbian community to acknowledge the issue of lesbian battering.
- There is no typical victim or offender.
- Lesbian battering is a crime.
- Lesbian battering can be physical, emotional, sexual and psychological.
- Lesbian battering is traumatic on many levels, for the victim, the offender and the community.
- Lesbian battering may be lethal (physical and emotional) and tends to be progressive.
- Lesbian battering needs to be addressed by individuals, systems, and the community at large.

Myths about Lesbian Battering

- There is not much incidence of lesbian battering.
- The victim has an investment/payoff in staying in the relationship.
- She allows it, is masochistic, co-dependent, and provokes it.
- The victim is to blame for the violence.
- The problem is the relationship or family system.
- Lesbian battering is caused by chemical dependency.
- Offenders are psychopathic or mentally ill.
- Battered lesbians are sick.
- Offenders are out of control when they batter.
- Lesbians are nonviolent.
- It is easier for lesbians to leave a relationship.
- It is more likely that battering is mutual in lesbian relationships.
- Power is measured by size differentials.



How lesbian battering is similar to battering in heterosexual relationship

- No one deserves to be abused.
- Abuse can be physical, sexual, verbal behavior to coerce or humiliate, emotional or psychological.
- Abuse often occurs in a cyclic fashion.
- Abuse can be lethal.
- The purpose of the abuse is to maintain control and power over one's partner.
- The abused feels alone, isolated, afraid and usually convinced that the abuse was somehow her fault or could have been avoided if only she had known what to do.

How lesbian battering is different from heterosexual battering

- Lesbians who have been abused have much more difficulty finding appropriate support than straight women.
- The myth prevails that lesbian abuse must be “mutual”. No one assumes straight abuse is mutual.
- Utilizing existing services is tantamount to “coming out” and a major life decision.
- Support services and friends often minimize lesbian violence for several reasons—because the lesbian community doesn't want to destroy the myth of a “lesbian utopia” because the battered woman's movement doesn't want to destroy their myth of “all violence is caused by men”, because it is easy to fall into the trap of assuming that the size of a person has anything to do with battering.
To complain about lesbian abuse is to reinforce the stereotype that lesbians are “sick”. No one would claim straight relationships in general are mentally unstable because there is sometimes abuse.
- Lesbians have to face not only the sexist culture, but also homophobic one as well. A woman of color must face sexist, homophobia and racism.
- Lesbian survivors may know few or no other lesbians, leaving the abuser could mean total isolation.
- Lesbians usually aren't as tied financially to their partners as straight women.
- The lesbian community is small and in all likelihood, everyone the survivor knows will soon know of her abuse.



Checklist for Shelter Programs

1. Do all written materials use inclusive language (no pronouns) and address the issue of lesbian battering?
 - Mission
 - Philosophy statement
 - Brochures
 - Arrival and departure forms
 - Welcome letters, house rules, etc.

2. Is homophobia identified as oppression and a form of violence?
 - In the philosophy statement
 - In the house rules

3. Are policies inclusive of lesbians?
 - Does the definition of family in personal policies include lesbian families?
 - Does the affirmative action statement include sexual/affectional orientation?
 - Does the policy on confidentiality include confidentiality for lesbians and consequences for violating the policy?

4. Is the recruitment of staff, volunteers and board members, addressing homophobia?
 - Are candidates questioned about homophobia and providing services to lesbians?
 - Are position announcements distributed to reach lesbians?
 - Do job qualifications include commitment to confront homophobia?
 - Is homophobia training included for all new staff, volunteers and board members?
 - Does the program have a commitment to lesbian involvement at all levels?



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5. Is the program prepared to respond to the needs of battered lesbians?
 - Is information available on resources for battered lesbians?
 - Does the library, video library, or magazine rack contain lesbian books, videos, periodicals or articles?
 - Is the Children’s Program staff familiar with issues confronting lesbian mothers? (Custody, coming out to children, etc.)
 - Is the Women’s Program familiar with issues confronting battered lesbians? (Dangers of using the “system”, closeting, etc.)
 - Are all services prepared to include battered lesbians? (Support groups, intervention program, legal advocates, etc.)
 6. Has the issue of lesbian battering been integrated into the program on an ongoing basis? (One or two trainings will not remove the barriers and fix the problem.)

Suggestions on How You Can Help Make Your Battered Women’s Program More Accessible to Battered Lesbians

1. Believe survivors. Acknowledge the existence and seriousness of lesbian relationship violence.
2. Make a personal commitment to advocate for lesbians.
3. Develop protection plans, support and safe advocacy interventions for lesbian survivors.
4. Monitor language. Use language that is inclusive whether or not you know if a lesbian is present.
5. Check all materials used by the program to be sure they are gender neutral.
6. Check resources and referrals. Do they include resources for lesbians? Are the listed resources sensitive to lesbians who are battered?
7. Give lesbian women the Lesbian Battering Resource Guide and other relevant materials from the “confronting Lesbian Battering Manual”.
8. Check your program’s resource library and be sure it includes materials on lesbian battering.
9. Increase the materials your program has that are written by women of color and lesbians of color.
10. Subscribe to “Equal Time” and other gay/lesbian publications.
11. Hang lesbian posters and artwork in the shelter/program.



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12. Create clear policies for how your program will deal with homophobic behavior by staff and by other women in the program.
 13. Allot a specific percentage of your budget for lesbian battering work.
 14. Encourage DOC to include lesbian battering issues in funding requirements.
 15. Include the word lesbian in funding requests. Fundraise for services for lesbians, i.e., lesbian safe-home networks.
 16. Hire survivors of lesbian battering. Place survivors on boards and in volunteer pool—include questions about power and the use of power in your interview questions.
 17. Create a process for identifying the abusers and the abused.
 18. Do in-services on lesbian battering for your own program at least twice a year. Utilize the “Confronting Lesbian Battering Manual” for complete staff and volunteer training.
 19. Run community trainings for police, court personnel, and other groups willing to learn. Hold community forums on lesbian battering to bring this issue out of “the closet” to promote awareness.
 20. Dialogue with sexual assault programs.
 21. Talk to judges, child protection workers, etc. Get an idea of what their reaction will be to a battered lesbian coming through the system.
 22. Distribute Lesbian Battering Resource Guides to police departments and service providers. Have the brochure on display at your program.
 23. Lobby for statewide anti-discrimination legislation, which could make lesbians and gay men a protected class (as race, religion and color are now).
 24. Promote discussion of the connection between racism and homophobia. Remember the connections between all types of oppression and all types of violence against women.
 25. Network with other advocates working on these issues.
 26. Question people who try to stop the inclusion of lesbian battering in the battered women’s movement.



How Will We Know If We Are Ready to Shelter Battered Women Who Are Lesbians?

1. Is the shelter a safe place for lesbians to work as staff or volunteers?
2. Do you deal with homophobia continuously in staff and volunteer training?
3. Do you say during screening process that you have lesbians on staff that you shelter lesbians? (Some shelters make a clear statement to woman seeking shelter that the shelter is a multi-cultural home, that women of color, lesbians, and people of all classes, races, and occupations are welcome.)
4. Is the shelter environment heterosexist? (Are all the posters, pictures, books, etc., heterosexual?)
5. Are your intake and other forms sexist in that they assume that the batterer is male?
6. Does your hotline answering process make the assumption that the batterer is male?
7. Is the language you use and the assumptions you make about people, life, the world heterosexist? (Do you assume everyone is heterosexual?)
8. Does your outreach acknowledge that lesbians who are battered are welcome in your shelter?



Topic to be Addressed: Domestic Violence Scenario

Article Length: 4 pages including cover

Synopsis: This article uses an actual situation that occurred on the Pine Ridge Indian Reservation. It includes: the identified players and the full written description of a domestic violence scenario on the reservation.

Questions for Discussion:

1. Who are the players they mention? Why do you think they list the people they do? Are they missing anyone? Why or why not?
2. What role do the various players play?
3. What are the strengths of the written report? Why?
4. What are the document's limitations? Why?
5. How does this report compare to the reports in your community? What parts do you find useful? Discuss similarities and differences.
6. How did the various systems respond to the victim? To the batterer?
7. What is the role of confidentiality in this scenario?
8. What obstacles does the victim face?
9. How is she supported or discouraged?



Interagency Cooperation—Ensuring Victim Safety

Scenario (From an actual situation that occurred on the Pine Ridge Indian Reservation).

Players:

- Victim—Native American female, mother of four, unreported history of being abused.
- Suspect/Batterer—Native American male, convicted felon (probation/parole completed).
- Concerned Family Member (Victim)
- Advocate
- Domestic Violence Program Law Enforcement Liaison
- Special Agents—Bureau of Alcohol, Tobacco & Firearms (ATF)
- Local Law Enforcement—Criminal Investigations
- Local Law Enforcement—District Uniformed Officers

Synopsis:

On a Tuesday afternoon, a concerned family member of the victim went to see a domestic violence program advocate concerning the victim. The family member was requesting assistance in getting the victim out of a long-term abusive situation. The problem was that the batterer was a violent man, a convicted felon, and known to use firearms and other weapons. He had physically abused and battered the victim for several years, until she had threatened to report him to the police. The batterer, who was then still on Federal probation, stopped his physical abuse of the victim, but continued emotional abuse, and kept using her children to threaten her and force her isolation. The batterer also worked adjacent to their residence, where he could see the house, her comings and goings, and anyone who might visit. From his worksite, he used binoculars to watch the house. The batterer, according to the family member, was in current possession of several firearms. Although he had not threatened the victim with the firearms, the victim knew he was capable possibly using the firearms on her, or her children (none of whom were fathered by the batterer). The victim wanted out of the relationship and away from the batterer, but was afraid he would use deadly force to keep her from leaving. The possibility also existed that he would retaliate against her through her children. The victim was willing to give information against her batterer concerning the weapons, which she felt were in his possession in violation of his probation/parole. The victim would only give this information once she was safely out of the residence, where the batterer could not find her.

The family member, who had limited access to the victim, had worked out a plan to spirit the victim away to the shelter, after the batterer ate lunch on Thursday. Because the batterer worked at a landfill site, he would be working and less able to stop the victim. Also, the victim would be able to pick up her children from school after leaving the residence. The family member and victim felt this was the only safe way to get her and her children away without incident, without a chance of getting them or a police officer shot, and without giving the batterer an opportunity to stop them or interfere with the escape. Arrangements were made by the advocate to shelter the victim and her children on Thursday, provided they could safely get away. The family member would be the only contact with the victim until she was safe and away.

The advocate contacted the Program's law enforcement liaison and briefed him on the situation. The liaison had personal knowledge of the batterer's history of violence and agreed that the victim



would be in serious jeopardy if the batterer knew she was planning to leave. Since the victim knew the batterer best, it was agreed she should make the call on when she would attempt to leave, through her contacts with her family member.

The liaison contacted the area U.S. Probation/Pretrial Services Office to find out if the batterer was still on Federal probation. He was informed that the batterer had completed his probation, but that he could possibly be a “restricted felon” because of his specific crime. This meant that he might be prohibited from owning or being in the possession of firearms or other weapons. The liaison was referred to the Bureau of Alcohol, Tobacco, and Firearms (ATF), who monitor and enforce firearm restrictions for felons.

The liaison was unable to contact the closest ATF office initially but did manage to contact a field office within the region. The Special Agent on-call took down the details and sad he would contact and brief the ATF office responsible for the liaison’s region.

The liaison contacted the local law enforcement criminal investigation division and informed them of the situation, in case ATF wanted to move against the batterer once the victim was clear. They were well aware of the batterer’s history as well and agreed to coordinate with the liaison and ATF. Since the victim might be in imminent danger, should the victim find out what was planned, it was agreed that uniformed law enforcement from that district’s uniformed force. They were briefed, in person, by the liaison, and agreed to keep all information confidential until the victim was safe. By agreement, they would be ready to respond to the victim’s assistance, but only if the victim requested help, a report was made by a third party that abuse was occurring or upon direct information from the ATF, criminal investigation division, or the liaison. Plans were drawn up for officers to meet the victim and family member after they were away from the house, and to escort her first to the school and then to the shelter. Other officers, as soon as the victim was away, would watch the batterer, to make sure he did not follow the victim or remove the weapons from the residence.

The following day (Wednesday), a Special Agent from the closest ATF office called the liaison. He was briefed about the situation. He agreed that the safety of the victim was paramount, and said he would be checking to determine if the batterer was, indeed, a restricted felon. Later in the day, it was confirmed that the batterer was a restricted felon. As such, he would be subject to immediate arrest by law enforcement, as long as the weapons could be found on him, in his possession, or in an area of his residence to which he has sole or joint access with victim. The need for a search warrant was discussed. It was agreed that one would not be needed, since the victim would allow a search of the house, which was in her name alone. The ATF agent said he would be having the local law enforcement officers handle the matter, since he was over five hours away. He also said the liaison would be “calling the shots” on whether or not to proceed, and when. The ATF agent briefed local law enforcement on the arrangement.

All communication, even with local law enforcement, was conducted either in person or by telephone, to minimize the chance that the batterer might know the victim’s plans.

The escape plan for that Thursday had to be postponed. The weather was bad and the batterer stayed home from work. The family member continued to stay in contact with the advocate, who kept the liaison informed. Local law enforcement and the AT were updated by the liaison.



On the following Thursday, the family member told the advocate that the plan would be attempted that day. The family member also advised that the batterer had since moved the weapons from his house (supposedly on the advice of a medicine man but more likely from a leak). The fact remained that the victim still wanted to leave, still needed assistance, and was still in danger of retaliation from her batterer. Except for the search for weapons, all other plans remained in effect and law enforcement authorities were kept advised.

After noon, that Thursday, her family member safely removed the victim from her residence. They met local law enforcement officers away from the area and were escorted to pick up the victim's children at school. Other officers observed the batterer during this time. The victim was then safely transported to the shelter, where she was assisted in filing for an Order of Protection. The Order was immediately forwarded to the officers observing the batterer, who affected service of the Order. Total time from escape to service was 2 ½ hours. This was remarkable in that the escort and relay of the Order totaled over one hundred miles.

The outcome was not as planned, but the victim was safely removed from the residence and abusive situation, her children were safe, and the batterer was served with the Order for Protection. This was only possible because of the close cooperation and communication between the domestic violence program, Bureau of Alcohol, Tobacco, and Firearms, and local law enforcement.



Topic to be Addressed: Full Faith and Credit Case Scenarios
Article Length: 4 pages including cover

Synopsis: The following consists of 10 different scenarios involving Full Faith and Credit cases. The answers are given on this page. The handout only has the scenarios so they can be thoroughly discussed.

Questions for Discussion:

1. Ann’s protection order is valid under the Violence Against Women Act (VAWA) and enforceable across state lines because her ex-boyfriend was served and had the opportunity to be heard even though he did not actually show up for the hearing.
2. Susan’s emergency order is valid in State C for the period of time that it is in effect in State B. In other words, it is valid until at least the date of her court hearing in State B. In terms of whether it’s enforceable, that will depend on whether or not her batterer has been served or received notice of the order. If Susan reports a violation of the order before her batterer has been served or notified, the responding law enforcement officer will be unable to arrest her batterer for violating her order. On the other hand, if she reports the violation after service or notice has been effectuated, her batterer can be charged with violating the order as long as the alleged violation constitutes an arrestable offense in State C. In addition, whether or not service or notice has been confirmed, the responding officer may be able to charge her batterer with other substantive criminal offense, if applicable.
3. Libby’s court approved consent order is enforceable in another state, however, it is not clear whether the custody provision in her order is entitled to full faith and credit under the VAWA. Some legal experts maintain that the plain language of §2265 explicitly excludes custody and support orders from enforcement under the VAWA, while other legal scholars contend that the statute should be interpreted to exclude only custody and support orders that are independent divorce or custody proceeding, not custody provisions included in protection orders. Since, at the present time, there is a lack of consensus on this issue, battered women probably will need to ensure that the custody provisions in their orders meet the requirements of the Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act to be enforceable across state lines.
4. Her tribal protection order is enforceable in State E as well as in any other state in the country.
5. Her civil protection order is enforceable in State F and any other state throughout the country.



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6. Her protection order is enforceable in State H because she properly filed for an order in State G. However, her batterer did not properly file for a protection order in State and, therefore, his order is not entitled to enforcement in that state. Please Note: If the authorities in State H do not evaluate the circumstances under which her batterer's order was issued, they may not know that his order is unenforceable. Rachel should, therefore, inform the court in State H that her batterer's order does not comply with §2265 of the VAWA.
 7. Jessica's order is enforceable in another state or jurisdiction. Her batterer's order is also enforceable under the VAWA because he counter-filed and the court-approved consent agreement included findings against both parties.
 8. If Tanya is ineligible for a protection order in State J, but she was eligible for the protection order in State I, State J must still enforce her out-of-state order. Note: This is one reason why documentation of foreign orders or re-issuance of an order in a second state may not be a useful remedy or even available to victims of domestic violence.
 9. State L must enforce Teresa's out-of-state order including all of the relief given by State K, even if no such relief exists in State L. Lifetime orders must, therefore, be honored in the enforcing state as long as they remain in full force and effect in the issuing jurisdiction.
 10. The police should charge Maria's abuser with indirect criminal contempt for violation of the foreign order in State M. Beyond this, charges for violation of substantive state criminal laws may also be available. Finally, the police should notify the local prosecutor and the U.S. Attorney since federal crimes may have also been committed.



Full Faith and Credit Case Scenarios

1. Ann gets a three-year protection order against her boyfriend in State A. Her ex-boyfriend was served before the order was issued; however, he failed to appear at the hearing.

Question: Is her protection order valid under the VAWA and, therefore, entitled to enforcement across state Lines? Why or why not?

2. Susan gets an emergency ex parte (no contact) protection order in State B. The order is effective for 10 days, at which time a hearing has to be held on the matter. Because Susan fears for her safety, she decides to stay with her sister in State C until the date of the hearing.

Question: Is her emergency ex parte order valid in State C? If so, for how long? Can the police in State C arrest her batterer if he violates the order?

3. Libby gets a one-year protection order in State D against her ex-husband. Although her husband does not admit that he abused her, he agrees to the entry of the order at the hearing. The order, among other things, awards her custody of the parties' minor children, Alex and Sarah.

Question: Is her court-approved consent order enforceable across state lines?

4. Becky obtains a criminal protection order on an Indian pueblo in State E. Shortly thereafter, she leaves the pueblo and moves to the state capital.

Question: Does she have a right to enforcement of her order? If she visits a family member who resides in a neighboring state, is her order enforceable in that jurisdiction?

5. Joan obtains a civil protection order in San Juan, Puerto Rico. She then visits a friend who resides in State F

Question: Is her order enforceable there? Why or why not?

6. Rachel files a petition for a protection order in State G. When she gets to court, the judge decides to grant her protection order, but also gives her batterer one against her.

Question: Is her protection order enforceable in State H? Is his?



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7. Jessica files for a protection order, and then her batterer counter-files for his own order. At the hearing, Jessica a consent agreement with her batterer where they both agree to have protection orders entered against them. There is a language in the consent agreement that acknowledges the commission of abuse by both parties

Question: Is her protection order enforceable across state lines? Is his?

8. Tanya gets a protection order against her same sex abuser in State I. She then flees to State J, where a woman with an abusive partner of the same sex is not eligible for a protection order.

Question: Is she entitled to full faith and credit for her order and, thus, enforcement of her order in State J?

9. Teresa was granted a lifetime protection order in State K in 1985. She now resides in State L where protection orders can be issued for a maximum duration of only three years.

Question: Is she entitled to enforcement of her order in State L?

10. Maria gets a protection order in a state where violation of that order is a misdemeanor. Shortly thereafter, she relocates to State M where violation of an order is not prosecuted as a misdemeanor offense but rather as indirect criminal contempt.

Question: When Maria's abuser violates the stay away provision of her order, should he be arrested for indirect criminal contempt?



Topic to be Addressed: Advocacy for Native Women

Article Length: 3 pages including cover

Synopsis: This paper lists several points regarding advocacy for Native Women.

Questions for Discussion:

1. How does each point break down for each aspect of the criminal justice system?
2. Divide into small groups and make examples from a few of the points listed.
3. What does advocacy mean to each person involved in a Coordinated Community Response?
4. How could assuming the opposite re-victimize a woman? Give an example.
5. How does confidentiality tie into advocacy? Give examples.
6. How does collusion tie into advocacy? Give examples.
7. Why is it important for everyone to be an advocate to a battered woman instead of having a pivotal person?
8. What could the system accomplish as an advocate? How does this tie into the overall goal of a Coordinated Community Response?



Defining Advocacy for Native Women

Advocacy Is

Defending a woman's right to be safe from physical abuse and rape. Documenting the numerous ways she has actively resisted the violence.

Advocacy Is

Helping a battered woman attain basic safety by identifying what safety means based on her situation.

Advocacy Is

Working with women rather than for women by demonstrating by example in the courts and other settings. Respect her humanness by asking for permission to speak in her behalf.

Advocacy Is

Informing her of her options and available resources, including legal help, shelters, emergency funds and medical services.

Advocacy Is

Educating women on identifying the physical and psychological violence in her life. Battered women may not be aware that isolation and emotional abuse are tactics of control.

Advocacy Is

Remembering that a battered woman will make choices that we may not agree with, and yet we still must support her efforts, respecting her ability to make decisions that impact her life on her own behalf.

Advocacy Is

Articulating her needs to various people within institutional systems and following up on systems accountability and addressing those barriers.



Advocacy Is

Delineating information from the criminal justice system in a way that women can understand the criminal and civil process and explaining legal remedies including: orders for protection, divorce, custody and supervised visitation.

Advocacy Is

Working with all women from all walks of life including: women arrested for domestic violence, lesbian women, bi-sexual women, women with alcohol and substance abuse problems. Remember that advocates have responsibility to help all women.

Advocacy Is

Protecting her privacy and confidentiality by informing about what it means and how it affects her safety. Being aware that information in files may be used against battered women in custody cases.

Mending the Sacred Hoop Technical Assistance Project, 1999. Revised 2002.



CHAPTER 1

GENERAL PROVISIONS

Section 101. The Tribal Domestic Violence Code is construed to promote the following:

1. That violence against family members is not in keeping with traditional Native values. It is the expectation that the criminal justice system respond to victims of domestic violence with fairness, compassion, and in a prompt and effective manner. The goal of this code is to provide victims of domestic violence with safety and protection.
2. It is also the goal to utilize the criminal justice system in setting standards of behavior within the family that are consistent with traditional Native values and, as such, the criminal justice system will be utilized to impose consequences upon offenders for behaviors that violate traditional Native values that hold women and children as sacred. These consequences are meant as responses that will allow offenders the opportunity to make positive changes in their behavior and understand "Native cultural values".
3. The prevention of future violence in all families through prevention and public education programs that promote cultural teachings and traditional Native values so as to nurture non-violence within Native families and respect for Native women.

Section 102. Authority of the Tribe to regulate domestic violence in its jurisdictional territory.

1. By treaty, the Tribe has the right to exclude non-members as well as an inherent authority to protect its political integrity and provide for the welfare of its members and others who choose to live within its territory.
2. The problem of domestic violence within the boundaries of the Tribe is seriously impacting the ability of the tribe to provide for the health and well-being of its tribal members and threatens the political integrity of the tribe.
3. Domestic violence is also being perpetrated by or against persons who are not members of the Tribe. These activities of non-members and non-Indians, who have entered into consensual relations with tribal members, will be regulated under this ordinance just as the activities of tribal members.

Section 103. Definitions

Unless the context otherwise requires, as used in the Tribal Code:

²⁵ Sacred Circle, September 2000.



1. "Domestic violence/abuse" means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense:

(a) Attempting to cause or causing physical harm to another family or household member;

(b) Placing a family or household member in fear of physical harm; or

(c) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.

2. "Family or household members" include:

(a) Adults or minors who are current or former spouses;

(b) Adults or minors who are dating or who have dated, including those persons involved in a same sex relationship;

(c) Adults or minors who are engaged in or who have engaged in a sexual relationship including same sex relationships;

(d) Adults or minors who are related or formerly related by marriage as recognized by western or Native tradition; including same sex relationships;

(e) Persons who have a child in common; and

(f) Minor children of a person in a relationship that is described in paragraphs (a) through (e).

3. "Program of intervention for perpetrators" means a specialized domestic violence offenders' program that accepts court orders and voluntary participants that:

(a) Offers intake, orientation, and placement in a domestic violence class;

(b) Offers a minimum of 48 re-education classes;

(c) Offers other programs designed to provide information and interventions to stop violence against Native women;

(d) Utilizes historical/cultural information in re-educating perpetrators of domestic violence regarding responsible Native behavior in the family/community/nation.

(e) Makes available and integrates the specialized function, knowledge and expertise of elders and medicine people.

4. "Program for victims of domestic" means a specialized program for victims of domestic violence and their children whose primary purpose is to provide advocacy and related services that includes but is not limited to advocacy, shelter, crisis intervention, supportive



services, referral, and makes available the specialized knowledge and expertise of elders and medicine people.

5. "Safety plan" means a written or oral outline of actions to be taken by a victim of domestic violence to secure protection and support after making an assessment of the dangerousness of the situation.

Section 104. Severability Clause

If any clause, section or part of this ordinance is declared invalid by the tribal court, such shall not render invalid the remainder thereof, but shall be confined in its operation to the offending section.

Section 105. Specific Applicability

The section herein applies specifically to this domestic violence code and takes precedence over any general laws of applicability.



CHAPTER 2

CRIMINAL PENALTIES AND PROCEDURES

Section 201. "Crime involving domestic violence" defined.

Crimes involving domestic violence as defined in Section 103 are oftentimes already defined under the existing Tribal Code. The purpose of this ordinance is to clarify that domestic violence is a separate crime punishable separate and apart from the underlying crime, and to acknowledge that when the following crimes against a family or household member, a finding of such shall trigger the application of this ordinance. The crime of domestic violence occurs when a family or household member commits one or more of the following offenses against another family or household member:

1. Arson;
2. Assault Offenses (Battery, Aggravated Assault, Simple Assault, and Intimidation);
3. Burglary, Breaking and Entering;
4. Destruction of Property, Damage, Vandalism of Property
5. Homicide Offenses (Murder and Non-negligent Manslaughter, Negligent Manslaughter, and Justifiable Homicide);
6. Kidnapping, Abduction;
7. Sex Offenses, Forcible (Forcible Rape, Forcible Sodomy, Sexual Assault with an Object, and Forcible Fondling);
8. Stolen Property Offenses;
9. Weapon Law Violations;
10. Disorderly Conduct;
11. Family Offenses, Non-Violent;
12. Stalking;
13. Trespass of Real Property;
14. Intoxication;
15. Habitual;
16. Harassment;

Committing the above stated should not diminish the seriousness of domestic violence or take precedence over the crime of domestic violence since the intent of this code is to prevent further acts of domestic violence. The commission of one of the above-referenced crimes against a family or household member shall trigger the application of this ordinance, even if the criminal complaint is also charged as one these offenses. The purpose of this code is to differentiate between these crimes committed against non-family and non-household members and those against family and household members as defined in Section 103 which shall be subject to the provisions of this ordinance.

The use of alcohol in the committing of domestic violence or any crime related to domestic violence shall not diminish the seriousness of domestic violence or take precedence over the crime of domestic violence. The fact that the perpetrator was under the influence at the time of the offense shall not be utilized by law enforcement prosecution or court to mitigate the severity of the violence. Voluntary intoxication, which is available as a legal defense only in cases involving



specific intent crimes, shall not be available as a defense to a perpetrator, nor shall it be utilized to lessen the consequences to the perpetrator.

Section 202. Violation of certain orders for protection is a misdemeanor.

Violation of one of the following orders issued in accordance with the Tribal Domestic Violence Code is a misdemeanor.

1. An order enjoining the respondent from threatening to commit or committing acts of domestic violence against the petitioner or other family or household member.
2. An order prohibiting the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating verbally or in writing with the petitioner directly or indirectly through family members, relations by marriage, friends, and co-workers.
3. An order removing and excluding the respondent from the residence of the petitioner.
4. An order requiring the respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member.
5. An order granting temporary custody and child support regarding children, denying visitation or outlining specific visitation conditions and restrictions, including supervised visitation.
6. An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the court.
7. An order requiring the respondent to attend domestic violence classes;
8. An order requiring the respondent to obey all laws of the Tribe.

The petitioner in who is granted an order for protection cannot violate or be arrested for a violation of her/his own order for protection.

Any person granted a civil or criminal order of protection from the Tribal Court or any other court of competent jurisdiction cannot be punished for a violation of that order for protection under this ordinance. It shall not be a defense to a charge of violation of an order for protection under this section that the victim consented to the violation by encouraging contact or a violation of the order of protection. A violation of an order for protection shall be a Class _____ misdemeanor.

Section 203. Enhancement of penalty for second or subsequent crime involving domestic violence.

When a defendant makes a judicial admission, pleads guilty to, or has been found guilty of a second or subsequent crime involving domestic violence within five years, the penalty is enhanced by one degree above the penalty otherwise provided for that offense or as otherwise enhanced for an habitual offender.



This section shall apply to any offense committed after the enactment of this section, but any conviction of a crime of domestic violence committed before enactment of this section may be considered in determining whether the sentence should be enhanced.

Section 204. Duties of law enforcement officer to victim of domestic violence; required notice to victim.

1. A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and others present from further violence and has a duty to arrest upon finding probable cause to believe that domestic violence has occurred. A law enforcement officer need not obtain a search warrant in order to enter a residence where s/he has probable cause to believe a crime of domestic violence is occurring or has just occurred, nor to seize property under this subsection. Such means includes but are not limited to:

- (a) Taking the action necessary to provide for the safety of the victim and any family or household member.
- (b) Confiscating any weapon involved in the alleged domestic violence.
- (c) Transporting or obtaining transportation for the victim and any child(ren) to a shelter or any other place of safety.
- (d) Assisting the victim in removing essential personal effects.
- (e) Assisting the victim and any child(ren) in obtaining medical treatment, including obtaining transportation to a medical facility.
- (f) Giving the victim immediate and adequate notice of the rights of victims and or the remedies and services available to victims of domestic violence.

2. As part of the notice required by paragraph (f) of subsection 1, the law enforcement officer shall give, in addition to verbal notification, written notice to the adult victim substantially as follows:

"If you are the victim of domestic violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety, including asking for an emergency order for protection that will provide for your immediate protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you to a safe place, including but not limited to a shelter, a family member's or friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. You may request a copy of the report at no cost from the law enforcement department."

"Please be advised that the prosecutor may choose to file a criminal complaint against your assailant. You also have the right to file a petition requesting a permanent order for protection from domestic violence which could include any of the following orders:



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- (a) An order enjoining your abuser from threatening to commit or committing further acts of domestic violence;
 - (b) An order prohibiting your abuser from harassing, annoying, telephoning, contacting or otherwise communicating with you, directly or indirectly through family members, relations by marriage, friends, and co-workers.
 - (c) An order removing your abuser from the residence regardless of ownership;
 - (d) An order directing your abuser to stay away from you or any other designated household/family member's place of residence, school, place of employment, or any other specified place frequented by you.
 - (e) An order prohibiting your abuser from using or possessing any firearm or other weapon specified by the court;
 - (f) An order granting you possession and use of the automobile and other essential personal effects regardless of ownership;
 - (g) An order granting you custody of your child or children;
 - (h) An order denying your abuser visitation;
 - (i) An order specifying arrangements for visitation, including requiring supervised visitation; and
 - (j) An order requiring your abuser to pay certain costs and fees, such as rent or mortgage payments, child support payments, medical expenses, expenses for shelter, court costs, and attorney's fees.

The forms you need to obtain an order for protection are available from _____ [shelter] advocates and/or the clerk of court. The community services available to assist you in obtaining information relating to domestic violence, treatment of injuries, and places of safety and shelter are _____. You also have the right to seek reimbursement for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other expenses for injuries sustained and damage to your property. This can be done through tribal court.

3. The written notice:

- (a) Must not include the addresses or locations of shelters.
- (b) Must be provided in the native language of the victim, if practicable, when the native language of the victim is not English.

4. Any law enforcement officer who enforces this section in good faith shall be immune from suit by any person alleging a violation of this subsection or any other section of tribal law.

Section 205. Mandatory arrest for crimes involving domestic violence; determination of predominate aggressor; required report.



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1. A law enforcement officer shall arrest any person, with or without a warrant, whom s/he has probable cause to believe committed any crime involving domestic violence as defined in Section 201, either in the presence of the officer or within 48 hours of a report to law enforcement of the commission of such offense, whether the offense is a felony or a misdemeanor. The officer shall promptly file a report and charge the arrestee with a criminal act.
 2. Regardless of the elements of any other crime committed in conjunction with the crime of domestic violence, the crime of domestic violence shall be considered a separate and distinct offense and shall be charged in addition to any other crime.
 3. If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who was the predominate aggressor. If the officer determines that one person was the predominate aggressor, the officer need not arrest the other person alleged to have committed domestic violence. In determining whether a person is the predominate aggressor, the officer shall consider:
 - (a) The history of domestic violence, both documented prior complaints and convictions and the law enforcement officer's own prior knowledge of the family;
 - (b) The relative severity of the injuries inflicted on each person, i.e., who in this relationship poses the most danger to the other?
 - (c) The likelihood of future injury to each person, i.e., Who is at the most risk of future harm?; and,
 - (d) Whether one of the persons acts in self-defense and/or in defense of others;
 - (e) The degree to which one of the persons has acted with more deliberate intent to control, isolate, intimidate, emotionally demean, cause injury or pain or fear of harm to the person or a third party.
 4. A law enforcement officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by any party.
 5. A law enforcement officer shall not consider the use or abuse of alcohol by either party in making a determination as to whether or not domestic violence has been committed.
 6. The employment, economic, educational, social, physical and/or mental health and political status of the alleged perpetrator and/or victim shall not be considered in making an arrest.
 7. The law enforcement officer is not required to make an arrest based on who hit who first but shall consider the dynamics of domestic violence and the definition of predominate aggressor in determining which party to arrest.
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8. In addition to any other report required, a law enforcement officer who does not make an arrest after investigating a complaint of domestic violence or who arrests two or more persons for a crime involving domestic violence must submit a written report setting forth the grounds for not arresting or, in instances where both parties are arrested, separate reports for each party must be submitted that describe how the determination was made that both parties acted as principle aggressors and that neither party acted primarily in self-defense.

9. Any reports shall be forwarded to _____ [shelter], within 48 hours of a report of domestic violence, regardless of whether or not an arrest was made, arrests were made of two or more persons, or a predominate aggressor was identified and arrested.

Section 206. Mandatory arrest for certain violations of orders for protection.

When a law enforcement officer has probable cause to believe that a respondent has violated one of the following orders of the court and verifies the existence of the order, the officer shall, without a warrant, arrest the apparent violator, whether the violation was committed in or outside the presence of the officer if the orders are issued in accordance with Tribal Domestic Violence Code, or in accordance with the laws of any other jurisdiction provided such laws comply with 18 U.S.C. 2265. An officer making an arrest under this subsection shall be immune from suit provided s/he acted in good faith.

1. An order enjoining the respondent from threatening to commit or committing acts of domestic violence against the petitioner or other family or household member.
2. An order prohibiting the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, either directly or indirectly through family, relations by marriage, friends, and co-workers.
3. An order removing and excluding the respondent from the residence of the petitioner.
4. An order requiring the respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member.
5. An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the court.
6. An order requiring the respondent to attend domestic violence classes.
7. An order requiring the respondent to abide by all laws of the Tribe.

The petitioner who is granted an order for protection cannot violate or be arrested for violation of her/his own order for protection.

Section 207. Change of venue prohibited.

The court where domestic violence charges were initially filed shall be the court of record except in situations where the alleged perpetrator or alleged victim can demonstrate:

1. Bias on the part of the court of record.
2. Personal bias on the part of the prosecutor of the court of record and/or any prosecutor assigned specifically to handle domestic violence cases.
3. Inability of the court of record to produce an unbiased jury pool to hear the case.

In the event that the alleged perpetrator believes the above conditions exist, s/he may file a motion for a change of venue at the time of arraignment. Said motion shall be heard in the court of record within two weeks following the filing of the motion.



Section 208. Agencies and/or departments cited in this code shall not use the court system to resolve in-house or interagency conflicts pertaining to domestic violence cases; court shall refer back to agency or department for administrative remedies.

The court shall not become involved in in-house or interagency conflicts pertaining to domestic violence cases but shall recommend to the complaining party that s/he utilize in-house administrative remedies and/or implement a mediation process in the event of interdepartmental conflict. Exceptions to this section are limited to:

1. If an employee is in conflict with another department, s/he cannot utilize the criminal justice system to attempt remedies. However, if in the course of said inter-departmental conflict, a criminal act is perpetrated against the employee, s/he may request a law enforcement investigation and/or filing of criminal complaints against the alleged perpetrator.
2. Civil complaints shall not be allowed unless an employee proceeds with a criminal process that demonstrates violent behavior and would place the employee in fear of imminent bodily harm.

Section 209. Officials who batter, including law enforcement officers; procedure.

Upon receiving notification that a law enforcement officer is a possible perpetrator:

1. The dispatcher shall immediately notify the Captain and a duty supervisor or designate. The supervisor will either respond to the call or will notify the officer's supervisor.
2. Line officers may secure the scene and ensure the safety of all parties, if necessary, and await the response of a superior. However, under no circumstances will line officers investigate calls regarding other fine officers or superior officers.
3. Someone of higher rank than the alleged perpetrator must always be involved in responding.
4. Immediate surrender or confiscation of all weapons.
5. Weapons can only be released by the Chief of Police.
6. Written reports of the incident will be forwarded to the tribal prosecutor and _____ [shelter] within 12 hours of the incident.
7. Investigation and prosecution for domestic violence will proceed regardless of administrative, interagency, or departmental investigation and sanctions.

Upon receiving notification that a public official is a possible perpetrator: The dispatcher shall notify the on call criminal investigator or designate who shall respond immediately. Law enforcement officers and public officials who are suspected of committing the crime of domestic



violence shall be subject to all provisions of the Tribal Domestic Violence code, including mandatory arrest for probable cause and all laws involving firearms disqualification herein.

Section 210. Authority of law enforcement officer to seize weapons.

Incident to an arrest, or in the course of securing a crime scene involving domestic violence, a law enforcement officer:

1. Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of a crime or any weapon in the immediate vicinity of the alleged commission of the offense.

2. Shall seize a weapon that is in the plain view or which is located during a search authorized by a person entitled to consent to the search. The seizure of weapons is without regard to ownership of the weapons; weapons owned by a third party are subject to confiscation when officers conclude that the weapon must be confiscated to protect law enforcement, victims of domestic violence, or others.

Section 211. Immunity.

1. Any law enforcement officer shall have immunity from any liability, civil or criminal, in making arrests or exercising any other authority granted it under this section when domestic violence or any crimes involving domestic violence have been committed, if the law enforcement officer acts in good faith and upon the best information so as to provide protection for victims of domestic violence.

2. Law enforcement officers shall have the same immunity with respect to participation in any court proceedings resulting from arrests made for domestic violence or any crimes involving domestic violence.

Section 212. Detention.

Any person detained for the crime of domestic violence and /or any related offenses is under the care and supervision of the Tribal Department of Public Safety Division of Corrections. There are certain privileges available to inmates at the discretion of Corrections personnel. This section's purpose is to provide the greatest safety mechanisms possible to victims of domestic violence. As such, Corrections personnel shall:

1. Prior to arraignment.
 - (a) Place all outgoing telephone calls; record the telephone number called and whether or not the party was contacted in the telephone log;
 - (b) Outgoing calls may be made to an attorney or family member. Telephone calls to the victim are prohibited.
 - (c) Visitation is limited to state or tribally licensed attorneys, _____ [shelter] personnel, mental health, tribal or state Department of Social Services, and chemical dependency professional.

2. Upon booking.
 - (a) Corrections personnel shall check all available information such as Order for Protection and probation status and notify _____ [shelter] personnel, the prosecutor's office and the arresting officers of findings.



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3. Instances of mutual arrest.
 - (a) In the event of mutual arrest (both parties are arrested) and detention, Corrections personnel shall arrange transport of one party to an alternate detention facility.
 4. Inmate threats.
 - (a) In the event an inmate threatens physical injury, retaliation, or makes verbal statements that indicate an intent to harm the alleged victim, domestic violence advocates, criminal justice personnel, or any reporting parties or witnesses, Corrections personnel shall complete an incident report and forward it to his/her supervisor and the prosecutor's office.
 5. Detention restrictions following conviction shall include:
 - (a) Any person convicted of or found guilty of domestic violence and/or other related offenses shall not be allowed trustee status.
 - (b) Shall not be allowed telephone contact with the victim in instances where an Order for Protection is in place prohibiting such contact.
 - (c) Other telephone privileges shall be permitted within the policies of the Division of Corrections.
 - (d) In the event an Order for Protection is in place and the victim seeks visitation of the inmate, Corrections personnel shall advise the inmate that an Order for Protection prohibits such contact and is in violation of the Order for Protection. Further, should the inmate choose to make contact, Corrections personnel are required to complete a report advising of the contact and forward it to the Prosecutor's office and the _____ [shelter] domestic violence department.
 6. No bond and no release conditions:
 - (a) Inmates ordered held with no bond and no release until hearing shall be subject to the same conditions of detentions as described in Section 212.1.



Section 213. Conditions of pre-trial release.

1. No person arrested for a crime of domestic violence or violation of an order for protection under this ordinance shall be released from detention until after the expiration of 72 hours from arrest, excluding weekends and holidays, notwithstanding the ability to post a cash or surety bond or the failure of the prosecutor to file a criminal complaint.
2. During the 72 hours and prior to arraignment, _____ [shelter] personnel shall meet in person with the alleged assailant and discuss the availability of _____ [shelter] domestic violence re-education classes and other local rehabilitative services that might be available.
3. In making a decision concerning pretrial release of a person who is arrested for or charged with a crime involving domestic violence or a violation of an order for protection, the court may ask for a pretrial investigation and, regardless of whether or not any such investigation report and recommendations are asked for, the court shall review the facts of arrest and detention of the person and determine whether the person:
 - (a) Is a threat to the alleged victim or other family or household member;
 - (b) Is a threat to public safety, and;
 - (c) Is reasonably likely to appear in court.
4. The court may order the defendant to be held until trial; trial shall be expedited.
5. The use or abuse of alcohol and/or other chemicals by the alleged perpetrator shall be considered, not only in relationship to the alleged assault but as alcohol and/or other chemicals relate to the alleged perpetrator's overall lifestyle, in the likelihood that alcohol and/or other chemicals greatly increases the likeliness or unlikeliness of a person to appear in court, potential for lethality, and enhances the possibility of further threats or injury to the victim or others.
6. The employment, economic, educational, social and political status of the alleged perpetrator shall not be considered in making a determination regarding release.
7. Before releasing a person arrested for or charged with a crime involving domestic violence or a violation of an order for protection, the court shall make findings on the record, if possible, concerning the determination made in accordance with subsection I and may impose conditions of release or bail on the person to protect the alleged victim of domestic violence and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:
 - (a) An order enjoining the person from threatening to commit or committing acts of domestic violence against the alleged victim or other family or household member.
 - (b) An order prohibiting the person from harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, either directly or indirectly through family, relations by marriage, friends, or co-workers.
 - (c) An order directing the person to vacate or stay away from the home of the alleged victim and/or child(ren) and to stay away from any location where the victim is likely to be.



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- (d) An order prohibiting the person from using or possessing a firearm or other weapon specified by the court.
 - (e) An order prohibiting the person from possession or consumption of alcohol or controlled substances.
 - (f) An order requiring regular supervision by the _____ [shelter] domestic violence probation department until the trial date.
 - (g) Any other order required to protect the safety of the alleged victim and to ensure the appearance of the person in court.

8. If conditions of release are imposed, the court shall:

- (a) Issue a written order for conditional release;
- (b) Immediately distribute a copy of the order to the prosecutor's office, Public Safety, and _____ [shelter], and;
- (c) Provide Public Safety with any available information concerning the location of the perpetrator in a manner that protects the safety of the victim.

9. The clerk of courts or jail shall provide a copy of the conditions to the arrested or charged person upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.

10. If conditions of release are imposed without a hearing, the arrested or charged person may request a prompt hearing before the court to review the conditions. Upon such a request, the court shall hold a prompt hearing to review the conditions.

11. When a person who is arrested for or charged with a crime involving domestic violence or a violation of an order for protection is released from custody, or has escaped from custody, the prosecution and/or _____ [shelter], shall:

- (a) Use all reasonable means to immediately notify the victim of the alleged crime of the release; and
- (b) Furnish the victim of the alleged crime at no cost an official copy of any conditions of release.

12. The address of the victim is confidential and law enforcement, prosecution and the court are prohibited from divulging it.

Section 214. Self-defense: Judicial safeguards for victims.

In the event of a dual arrest for domestic violence, or where a female perpetrator has been arrested, the presiding judge will take judicial notice of all factors in the case, including determinants for predominate aggressor, before entering a guilty plea by an alleged female perpetrator. Indications of self-defense shall be sufficient reason for a judge to order a hearing to show cause before a proceeding with a domestic violence charge against the alleged female perpetrator. Such procedure and hearing shall take place to determine possible self defense, with or without concurrence of the prosecutor.



During such hearing to show cause, the presiding judge will entertain any pertinent information and/or expert testimony of domestic violence advocates pertaining to domestic violence or any other factors relating to the self-defense characteristics displayed in domestic violence cases.

Section 215. Mandatory arrest for violation of conditions of release.

If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with section 209, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

A sworn affidavit by a domestic violence probation officer, _____ [shelter] employee or upon the report of a person to be protected under a domestic violence order for protection, of such violation will constitute probable cause to arrest without warrant, under this section.

Section 216. Written procedures for prosecution of domestic violence purpose.

Within 120 days following the enactment of the Domestic Violence Code, the Attorney General shall develop, adopt, and put into effect written procedures for the prosecution of domestic violence crimes to ensure the effective prosecution of domestic violence crimes, to include:

1. A mandatory "cooling off" period prior to arraignment.
2. The employment, economic educational, physical and/or mental health and political status of the alleged perpetrator and victim shall not enter into determinations for domestic violence crimes.
3. A "no drop" policy which prohibits victims from withdrawing charges.
4. The prohibition of no contest, diversion, and deferred sentencing.
5. The use or abuse of alcohol by the alleged perpetrator or victim shall not be a primary factor in determining the pursuit of domestic violence cases but shall be considered as it relates to the safety of the victim and potential lethality.
6. A process describing the utilization of advocates during every phase of criminal justice proceedings.
7. No member of the prosecution office has the authority to order the release of an alleged perpetrator prior to the procedures described in Section 209.
8. Prosecution will not dismiss a domestic violence case without prior consultation and review with the arresting officer and advocate.
9. Prosecution shall expedite proceedings with a minimum of continuances and shall consider the present residency of the victim as it relates to continuances, especially if the victim has relocated off the reservation for safety.
10. The victim may but shall not be required to act as the primary witness. In instances requiring "victimless" prosecution, the prosecution is required to enlist any and all evidentiary avenues, including photographs, other witnesses, excited utterance and other law enforcement testimony, medical records, history of past abuse, etc.
11. The prosecution shall make every reasonable effort and shall include advocacy in an attempt to avoid charging victims with contempt in instances where victims refuse to testify or cooperate in the criminal justice process.
12. In recognizing domestic violence as a crime and not a relationship issue, the prosecution shall not recommend or promote any actions that require the victim to engage in any type or form of a mediation process with the alleged assailant such as mediation, peace-making,



alternative justice, restorative justice, family counseling, couple counseling, circle sentencing, etc.

13. Enhanced measures to protect victims when the perpetrator is a repeat offender.

14. Any other policies and procedures that serve as reasonable efforts to ensure the protection and safety of victims of domestic violence.

Section 217. Duty of prosecutor to notify victim.

1. A prosecutor shall make reasonable efforts to notify a victim of an alleged crime involving domestic violence when the prosecutor has decided to decline prosecution of the crime, to dismiss the criminal charges filed against the defendant, or to enter into a plea agreement.

2. Release of a defendant from custody must not be delayed because of the requirements of subsection 1.

Section 218. Record of dismissal required in court file.

When a court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused of a crime involving domestic violence, the specific reasons for the dismissal must be recorded in the court file. The prosecutor shall indicate the specific reason why any witnesses are unavailable and the reasons the case cannot be prosecuted. Any dismissal of a complaint by the Court, for any reason other than insufficient evidence, may be appealed by the Tribe or the victim to the Tribal Supreme Court.

Section 219. Dismissal of criminal case prohibited because civil compromise reached.

A court shall not dismiss a criminal case involving domestic violence for the sole reason that a civil compromise or settlement is reached. Evidence of a civil compromise or settlement shall not be admissible in the criminal proceeding as evidence of consciousness of guilt or innocence, or an admission against interest. It shall also not be used to impeach a victim's testimony.

Section 220. Rights of victims of domestic violence; duty of prosecutor to inform victim of rights.

1. A victim of domestic violence is entitled to all rights granted to victims of crime including but not limited to:

(a) Be informed of all hearing dates and continuances.

(b) Provide the court with a victim impact statement, victim-opinion statement, and an assessment of the risk of further harm.

(c) Be present at sentencing and address the court.

(d) Advise the court of conditions of probation and parole required to ensure the safety of the victim and other family or household members.

(e) Restitution for losses sustained as a direct consequence of any criminal conduct.

(f) Apply for any available victims' compensation and to be informed of procedures for applying.

(g) Receive notice from the prosecutor in accordance with section 211.



2. The prosecutor shall notify the victim of domestic violence of the victim's rights set forth in this section in writing. For notice to be meaningful, it should be actual, timely, and written in a language in which the victim is competent.

Section 221. Residential confinement in home of victim prohibited; cultural remedies restricted.

In cases involving domestic violence, a court shall not order residential confinement for a perpetrator in the home of the victim. Nor shall the court order any action, even though the action might commonly be perceived by the community as a cultural remedy, that might jeopardize the safety of the victim.

Section 222. Diversion prohibited; deferred sentencing prohibited; no contest prohibited.

1. A court shall not approve a plea of no contest, diversion or deferred sentencing recommendations for a perpetrator of domestic violence.

Section 223. Conditions of probation for perpetrator convicted of crime involving domestic violence; required reports by probation department.

1. Before placing a perpetrator who is convicted of a crime involving domestic violence on probation, the court shall consider the safety and protection of the victim of domestic violence.

2. The court may condition the granting of probation to a perpetrator in compliance with one or more orders of the court, including but not limited to:

(a) Enjoining the perpetrator from threatening to commit or committing acts of domestic violence against the victim or other family or household member.

(b) Prohibiting the perpetrator from harassing, annoying, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly through family, relations by marriage, friends, or co-workers.

(c) Requiring the perpetrator to stay away from the residence, school, place of employment, or a specified place frequented regularly by the victim and any designated family or household member.

(d) Prohibiting the perpetrator from possessing or consuming alcohol or controlled substances.

(e) Prohibiting the perpetrator from possessing a firearm or other specified weapon.

(f) Directing the perpetrator to surrender any weapons owned or possessed by the perpetrator.

(g) Directing the perpetrator to participate in and complete, to the satisfaction of the court, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or psychiatric or psychological treatment or any other program or service deemed applicable by the domestic violence program or probation officer.

(h) Directing the perpetrator to pay restitution to the victim.

(i) Directing the perpetrator to refrain from any violations of law for the duration of his/her probation.

(j) Imposing any other condition necessary to protect the victim of domestic violence and any designated family or household member or to rehabilitate the perpetrator.



3. The court shall establish policies and procedures for responding to reports of nonattendance or noncompliance by a perpetrator with the conditions of probation imposed pursuant to subsection 2.

4. The court shall order, as a condition of sentencing, that the convicted perpetrator be placed under supervised probation with the _____ [shelter], probation department for a minimum of two years and for a term not to exceed five (5) years.

5. The _____ [shelter], probation department shall document and report to the Tribal Court any violations of law, any assault by the perpetrator, any threat of harm made by the perpetrator, and the perpetrator's failure to comply with any condition imposed by the court or probation department, regardless of where the violation occurred or under what jurisdiction the crime was adjudicated. Such a violation shall be deemed as constituting non-compliance with probation conditions.

Section 224. Release of perpetrator permitted under certain conditions; notice to victim; confidentiality of victim's address.

1. The court may release a perpetrator of a crime involving domestic violence only under conditions that would protect the safety of a victim of domestic violence or other family or household member.

2. The jailer shall notify _____ [shelter], staff who shall notify the victim of a crime of domestic violence of the escape of the perpetrator or of the proposed release of the perpetrator before the date of release of the perpetrator, if the victim has provided _____ [shelter], staff with an address at which s/he can notified.

3. The address of a victim of a crime involving domestic violence is confidential. Law enforcement, criminal justice personnel, probation and advocates shall not reveal any address provided pursuant to subsection 2. Law enforcement, criminal justice personnel, probation and advocates shall be subject to any internal policies or procedures that address breach of confidentiality and could also be subject to Section _____, Disobedience to the Lawful Order of the Court, or any other criminal sanctions existing within the Tribal Code, at the discretion of the Attorney General.



Section 225. Required written policies and procedures.

Within 120 days of the enactment of the Tribal Domestic Violence Code, Public Safety shall develop or adopt and put into effect written policies and procedures concerning:

1. The effective response of the agency to cases involving domestic violence.
2. Enforcement of all applicable Tribal statutes concerning domestic violence.
3. Protection and safety of the victims of domestic violence and other family and household members.
4. The method or process for sanctions against officers or officials who fail to follow or enforce official protocols.
5. Coordination with hospitals and programs for victims of domestic violence.

Section 226. Role of the Court; sentencing; probation conditions

In responding to the crime of domestic violence the court shall:

1. First Offense: If the alleged assailant pleads guilty or is found guilty, the judge shall order a mandatory minimum ten days in jail with a suspended imposition of sentence dependent upon successful completion of the _____ [shelter] domestic violence offenders' program and two years probation.
2. The offender is prohibited from substituting other services or activities such as individual counseling, alcohol treatment or participation in traditional healing practices for participation in a program as defined in Section 201 except for as such activities may be offered through the domestic violence program or sought out voluntarily in addition to the required domestic violence program by the offender.
3. In the event the offender does not comply with the domestic violence program and/or other conditions of probation, the court will find the offender in contempt of court and shall impose service of the original sentence during which time the offender must concurrently attend the domestic violence program. Further, the court will order that any resulting contempt of court sentence be served consecutively.
4. Upon any second or subsequent offense, the offender shall be sentenced to a minimum of six months in jail with three to five years probation with probation to commence at the time of the second offense; prior probation time will not be considered as fulfilling any second or subsequent probationary period and/or any maximum sentencing, fine, rehabilitation, and community service remedies available to the court. An offender shall participate in the program concurrent with any jail and fine sentences imposed by the court.
5. The court will advise the defendant when and where s/he will report to the _____ [shelter] probation department.
6. The victim is not available to the court for any sentencing or court imposed requirements in relation to the offender's sentence for the crime of domestic violence although the court may advise the victim of services available in the community through direct contact, the prosecution or probation office and advocates.
7. Urinalysis testing; domestic violence offenders found to be in non-compliance will serve their full sentence and shall be subject to all rehabilitation efforts available to any offender on probation. The probation officer shall petition the court for release outlining the



rehabilitation activity recommended for the perpetrator, the offender shall fulfill the remaining sentence upon completion of the rehabilitation activity.

8. While on probation a perpetrator shall be subject to unannounced portable breathalyzer tests to determine whether the probationer has been consuming alcoholic beverages.

Section 227. Probation violations, process for revocation, consequences.

1. The court shall recognize the signed affidavit of the _____ [shelter] probation department and accompanying documentation outlining any violation of probation conditions as probable cause to issue a warrant for the perpetrator's arrest.

2. Upon arrest for a probation violation, the person on probation will be held, without bond. _____ [shelter] probation department shall submit a probation investigation report and make recommendations to the court regarding further sentencing for the probation violation. Upon review of the affidavit, accompanying documentation, and recommendations, the court will determine whether or not a violation has occurred and enact a sentence of contempt of court. Upon such finding, the court shall enter any suspended sentence and the probationer shall be required to concurrently attend domestic violence classes. The court may impose any additional conditions and consider the appropriateness of additional charges for disobedience to a lawful order of the court. Further charges shall be served consecutively.

3. A person on probation's economic, employment, educational, social, and political status shall not be considered in this process or in any consideration of further sentencing.

4. The jail shall notify _____ [shelter] probation department of any person on probation who is arrested for any crime.

5. In the event the person who is charged with a re-offense of domestic violence and/or any other charge, the _____ [shelter] probation department shall file an affidavit, accompanying documents, and recommendations to the court. A violation of probation that occurs concurrently with other charges shall follow the, same process as outlined in subsection 2 and shall not preclude the prosecution from filing additional charges.

6. The Department of Public Safety shall expedite service warrants to ensure the safety of the victim and community.

Section 228. Mandatory training.

All employees and officials of law enforcement and the criminal justice system shall participate in a minimum of one semester hour equivalent (40 hours) of initial training and sixteen (16) hours of annual training to include but not be limited to:

1. The dynamics of domestic violence, the impact of victimization, offender's re-education programs, coordinated systems response in order to facilitate the implementation of this ordinance. In addition, law enforcement training shall include the technical aspects in making a domestic violence arrest including probable cause, self-defense, mutual arrest, evidence gathering, and report writing.



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2. _____ [shelter] shall be responsible for coordinating the training curriculum.
 3. Failure to participate in the required training shall result in disciplinary action with a minimum of a written reprimand placed in the personnel file and monitoring to ensure attendance at training.

Section 229. Juveniles.

Any juvenile committing domestic violence as defined in Section 103, shall be subject to prosecution and all other conditions outlined under the Tribal Domestic Violence Code. Any such proceeding shall be closed and any imposition of days shall be served in the Juvenile Detention Center.

Section 230. Ethics; familial relationships of law enforcement, prosecution, and judges to defendant.

All public servants shall be expected to perform their duties and proceed in accordance with this code no matter what the employment, educational, social and political status of the alleged perpetrator and/or victim. Public servants shall be held to the highest professional standards in responding to the crime of domestic violence.

In instances where law enforcement officers respond to a call involving a relative by blood or marriage, the officer shall:

1. Note the relationship on the case report.

In instances where law enforcement officers have responded to a call involving a relative by blood or marriage, the supervisor reviewing the report shall:

1. Review the report for accuracy and ensure that appropriate action has been taken.

A law enforcement officer who fails to respond within the appropriate legal parameters when a relative by blood or marriage is suspected of committing the crime of domestic violence shall be subject to disciplinary action as prescribed in the Department of Public Safety, 'Departmental Response to Domestic Violence.'

In instances where prosecutors and judges are involved in making decisions when the alleged perpetrator of a domestic violence crime is a relative by blood or marriage, the prosecutor and/or judge shall:

1. Refrain from prosecuting or hearing a case of the crime of domestic violence in the event the alleged perpetrator and/or victim is a relative by blood or marriage, whenever possible.

In the event that a prosecuting attorney or judge is a relative by blood or marriage and circumstances do not allow withdrawal from prosecuting or hearing the case, the prosecuting attorney and/or judge shall:

1. Be required to maintain the highest professional standards and shall conduct themselves within the legal parameters of the Domestic Violence Code and Judicial Code of Ethics.

Any perceived improprieties shall be referred to the Attorney General's Office for investigation and possible disciplinary or legal action.



Section 231. Specific Applicability

The section herein applies specifically to this domestic violence code and takes precedence over any general laws of applicability.



CHAPTER 3

CIVIL ORDERS FOR PROTECTION

Section 301. Eligible petitioners for order.

1. A person who is or has been a victim of domestic violence may file a petition for an order for protection against any person who has committed an act of domestic violence as defined in Section 102.
2. A parent, guardian, or other representative may file a petition for an order for protection on behalf of a child or family or household member or former household member on behalf of a child against a family or household or former household member who commits an act of domestic violence.
3. A person who is an employee of an agency or department engaged in conflict with another agency or department shall not be allowed to file for an order of protection against the individual employee or agency s/he is in conflict with. Neither shall an agency or department be allowed to file for an order for protection against another agency or department or against an individual employed by the agency or department.

Section 302. Uniform form required for petitions and orders; required statements in petitions and orders; duty of clerk to provide petitions and clerical assistance; no fee for filing.

1. The Tribal Court system shall:
 - (a) Develop and adopt uniform forms for petitions and orders, including but not limited to such orders issued pursuant to divorce, custody, protection and other domestic relations hearings; and
 - (b) Provide the forms to the clerk of court authorized to issue such orders.
2. In addition to any other required information, the petition for an order for protection must contain a statement listing each-civil or criminal action involving both parties.
3. The following statements must be printed in bold faced type or in capital letters on the order for protection:
 - (a) "Consequences for violation of this order for protection include:
 - (b) "If so ordered by the court, the respondent is forbidden to enter or stay at the petitioner's residence, even if invited to do so by the petitioner or any other person. In no event is the order for protection voided."
4. The clerk of court or _____ [shelter] personnel shall provide to a person requesting an order for protection:
 - (a) The form adopted pursuant to subsection 1;
 - (b) All other forms required for an order for protection, including but not limited to, forms for service and forms required by Uniform Child Custody Jurisdiction Act; and
 - (c) Clerical assistance in filling out the forms and filing the petition.



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5. Except as otherwise provided in section 305, a petition for an order for protection must be in writing, verified, and subscribed to in the manner provided by tribal law.
 6. All orders for protection must be issued on the form adopted in accordance with subsection 1.
 7. There shall be no filing fees for any civil action when the crime of domestic violence has, at a minimum, been reported to tribal law enforcement.

Section 303. Jurisdiction; venue; residency not required to petition.

1. The Tribal Court has jurisdiction over any petition for orders for protection under this code when the petitioner or respondent is domiciled or found within the boundaries of the Tribe or any act of domestic violence occurred within the boundaries of the Tribe or when the court is being asked to recognize and enforce a valid order of another court of competent jurisdiction. The Court shall construe this section liberally to exercise maximum jurisdiction.
2. All court proceedings in reference to the order for protection shall be carried out where the original order for protection was filed unless the alleged perpetrator can prove such conditions as cited in Section 207. Motions for a change of venue must be filed within five days of service upon the perpetrator. Relationship by blood or marriage are not sole cause for a change of venue. The motion shall be heard by the original court of record.
3. There is no minimum requirement of residency to petition for an order for protection.

Section 304. Continuing duty to inform court of other proceedings; effect of other proceedings; delay of relief prohibited; omission of petitioner's address.

1. At any hearing in a proceeding to obtain an order for protection, each party has a continuing duty to inform the court of each proceeding for an order for protection, any civil litigation, each proceeding in family or juvenile court, and each criminal case involving the parties, including the case name, the file number, and the tribe, county, and/or state, including federal proceedings, if that information is known by the party.
2. An order for protection is in addition to and not in lieu of any other available civil or criminal proceeding. A petitioner is not barred from seeking relief because of the existence of a pending action between the parties.
3. A petitioner may omit her or his address from all documents filed with the court. If a petitioner omits her or his address, the petitioner must provide the court a mailing address or, in the event the petitioner is utilizing advocacy services, the name of an advocate that has the knowledge to be able to contact the petitioner.



If disclosure of petitioner's address is necessary to determine jurisdiction or consider venue, the court may order the disclosure to be made:

- (a) After receiving the petitioner's consent;
- (b) Orally and in chambers, out of the presence of the respondent and a sealed record be made; or
- (c) After a hearing, if the court takes into consideration the safety of the petitioner and finds such disclosure is in the interest of justice.

Section 305. Order for protection; modification of orders; relief available ex parte; relief available after hearing; duties of the court; duration of order.

1. If it appears from a petition for an order for protection or a petition to modify an order for protection that domestic violence has occurred or a modification of an order for protection is required, the Tribal court may:

- (a) Without notice or hearing, immediately issue an order for protection ex parte or modify an order for protection ex parte as it deems necessary to protect the petitioner.
- (b) Upon notice, issue an order for protection or modify an order after a hearing whether or not the respondent appears;

2. A court may grant the following relief without notice and hearing in an order for protection or a modification issued ex parte; the court may grant the following relief in a permanent order for protection or a modification of a permanent order for protection:

- (a) Enjoin the respondent from threatening to commit or committing acts of domestic violence against the petitioner and any designated family or household member;
- (b) Prohibit the respondent from harassing, annoying, telephoning, contacting, or other communicating with the petitioner directly or indirectly through friends, relatives, or co-workers;
- (c) Remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence;
- (d) Order the respondent to stay away from the residence, school, or place of employment of the petitioner, or any specified place frequented by the petitioner and any designated family or household member;
- (e) Seize and prohibit the respondent from using or possessing a firearm or other weapon specified by the court;
- (f) Order possession of parties residence and use of or ownership of vehicle and other essential personal effect, regardless of the ownership, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, vehicle, and other personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;
- (g) Prohibits the destruction, liquidation or disposal of any and all joint assets or property and any and all specific assets or property of the petitioner.
- (h) Grant temporary custody of any minor children to the petitioner, and
- (i) Order such other relief as it deems necessary to provide for the safety and welfare of the petitioner and any designated family or household member.



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3. A court may grant the following relief in an order for protection or a modification of an order after notice and hearing, whether or not the respondent appears:
- (a) Grant the relief available in accordance with subsection 2.
 - (b) Specify arrangements for visitation of any minor child by the respondent and require supervision of that visitation by an independent third party or deny visitation if necessary to protect the safety of the petitioner or child.
 - (c) In specifying visitation arrangements, the court shall consider the respondent's overall lifestyle, especially as it pertains to alcohol and other chemical use.
 - (d) Order the respondent to pay attorney's fees.
 - (e) Order the respondent to:
 - (1) Pay rent or make payment on a mortgage on the petitioner's residence and pay for the support of the petitioner and minor child if the respondent is found to have a duty to support the petitioner or minor child;
 - (2) Reimburse the petitioner or other person for any expenses associated with the domestic violence incident, including but not limited to medical expenses, counseling, shelter, and repair or replacement of damaged property- and
 - (3) Pay any costs and fees incurred by the petitioner in bringing the action;

4. The court shall:

- (a) Cause the order to be delivered to Public Safety or other appropriate person or agency for service;
- (b) Make reasonable efforts to ensure that the order for protection is understood by the petitioner, and the respondent, if present;
- (c) Transmit, by the end of the next business day after the order is issued, a copy of the order for protection to the local law enforcement agency or agencies designated by the petitioner; and
- (d) Transmit a copy of the order to the appropriate entity for placement in the tribal registry.

5. An order for protection issued ex parte or upon notice and hearing (protection order) or a modification of an order for protection issued ex parte or upon notice and hearing (permanent order) is effective until further order of the court. If an ex parte order is entered, a hearing shall be scheduled within 14 days to allow the petitioner to respond to the petition. It shall be noted in bold or capital letters on the ex parte order:

THAT RESPONDENT BE ADVISED THAT IF A PERMANENT ORDER FOR PROTECTION IS GRANTED AT A HEARING, THIS EX PARTE ORDER SHALL REMAIN IN EFFECT UNTIL SERVICE IS COMPLETED OF THE PERMANENT ORDER FOR PROTECTION.

THAT RESPONDENT BE ADVISED THAT IF S/HE FAILS TO APPEAR AT THE HEARING ON A PERMANENT ORDER FOR PROTECTION, THE COURT MAY GRANT THE RELIEF REQUESTED, AND BE FURTHER ADVISED THAT IF A RESPONDENT FAILS TO APPEAR, SUCH FAILURE SHALL NOT BE USED AS A DEFENSE BY THE RESPONDENT OF VIOLATION OF RIGHTS.

6. Public Safety, through the captain of patrol, shall provide expedited service for orders for protection.



Section 306. Required hearings; service; duty of court when order for protection denied.

1. Except as otherwise provided in subsection 2, if a court issues an order for protection ex parte or a modification of an order for protection ex parte and the court provides relief pursuant to subsection 2 of section 305, the court shall set a date for a permanent order for protection hearing regarding the ex parte order for protection within 14 days. If personal service cannot be completed, the court shall notify the respondent by mail, at the last and best known address of the respondent and/or petitioner, of the date and time of the hearing for a permanent order for protection.
2. Upon approval of an ex parte order, the civil clerk of courts shall set a hearing date scheduled for within 14 days and immediately serve the petitioner regardless of the involvement or lack of involvement of an advocate.
3. If applicable, the respondent shall be served upon arraignment. The civil clerk of courts shall be responsible for forwarding a copy of the ex parte order to the jail for service.
4. In the event that service is not successful, the judge shall ask the petitioner, under oath at the hearing for the permanent order for protection, if s/he believes the respondent is avoiding service by concealment or otherwise, does not know his/her whereabouts or current residence. If the petitioner so states, the judge shall direct the civil clerk of courts to set another hearing date within 14 days and to initiate service by mail to the last and best known address of the respondent.
5. At a second hearing for a permanent order for protection and in the event the respondent again does not appear, irregardless of service, the judge shall issue a permanent order for protection if warranted and grant relief as the court deems appropriate.
6. At a second hearing for a permanent order for protection and having made reasonable efforts to contact the respondent, and in the event the petitioner requests or the court provides relief in accordance with paragraph (h) of subsection 2 Section 305, concerning custody of a minor child or the petitioner requests relief pursuant to paragraph (b), (c), or (d) of subsection 3 of Section 305, such a hearing determining the above cited relief must be given precedence over all matters including older matters of the same character and involving the same petitioner and respondent.
7. In a hearing held pursuant to subsection 1 or 2 of this section:
 - (a) Relief in accordance with Section 305 is available.
 - (b) If the petitioner seeks further relief concerning an issue not outlined by the ex parte order for protection, the court may grant the relief or continue the hearing or the petitioner may request a continuance.
8. Whether or not the respondent has been arrested or charged with domestic violence, the judge shall order the respondent to participate in the _____ [shelter] domestic violence intervention program. Further, should the court determine that an assault has occurred or the threat of assault has occurred, s/he shall notify the prosecutor.



(a) The _____ [shelter] domestic violence intervention program shall be responsible for initiating a civil contempt action should the respondent fail to comply with the program.

9. The Department of Public Safety shall expedite service of permanent orders for protection. If the respondent is not able to be served in person after 30 days, the Department of Public Safety shall notify the civil clerk of courts and the permanent order for protection shall be mailed to the last and best known address of the respondent.

10. Any person against whom a permanent order for protection is granted, and notice was sent to the last and best known address of the respondent, may petition the court to set aside the terms of that order for protection upon a showing by clear and convincing evidence that the respondent did not willingly and knowingly evade service and that there is a meritorious defense to the action. Upon such a showing, the court may grant another ex parte order to protect the petitioner and schedule a hearing within 14 days.

11. If a court denies a petition for an order for protection or a petition to modify an order for protection that is requested without notice to the respondent, the court shall inform the petitioner, in person or by mail, of his or her right to request a hearing upon notice to the respondent. The court must state in the court record why the request was denied.

Section 307. Petitioner cannot violate order for protection.

If a respondent is excluded from the residence of a petitioner or ordered to stay away from the petitioner, an invitation by the petitioner to do so does not waive or nullify an order for protection. Further, the petitioner cannot violate or be arrested for a violation of his or her own order of protection, ex parte or permanent.

Section 308. Denial of relief prohibited.

The court shall not deny a petitioner relief requested pursuant to section 305 or 306 solely because of a lapse of time between an act of domestic violence and the filing of the petition.

Section 309. Mutual orders for protection prohibited.

A court shall not grant a mutual order for protection, ex parte or permanent, to opposing parties.

Section 310. Court-ordered and court-referred mediation of cases involving domestic violence prohibited.

A court shall not order parties into mediation or any type of counseling, alternative justice, restorative justice, peace-making, circle sentencing, traditional Native ceremonies, or any other mediation type of situation that would put the petitioner in the position of dealing directly with the respondent, even if the petitioner has the right to refuse to participate, for resolution of the issues in a petition for an order for protection.

Section 311. Court costs and fees.



Fees for filing and service of process must not be charged for any proceeding seeking only the relief provided in this chapter.

Section 312. Court responsibilities; notification of assistance available to victims of domestic violence.

1. The court shall inform the victim of domestic violence about local services and advocacy available through _____ [shelter] without regard to the victim's employment, economic, educational, mental or physical health, social, or political status.

Section 313. Enforcement of foreign orders for protection.

1. A copy of an order for protection issued by another tribal, state, county, or other court jurisdiction, shall be given full faith and credit by Tribal law enforcement authorities as having the same force and effect as one issued by the Tribal Court.

2. Law enforcement officers shall attempt to verify the existence and/or validity of any foreign order for protection. In the event that the victim does not have a copy of the order, the officer cannot verify the order or the copy is not clear enough to determine its validity, the officer should arrest the subject on an applicable violation of the Tribal Code and shall assist the victim in obtaining verification of the order and/or explaining the procedure for obtaining an Tribal Order for Protection. The law enforcement officer shall also offer other assistance as provided in Section 204.

3. Valid foreign orders for protection shall be upheld as to the conditions of the order whether or not those remedies or conditions are available through the Tribal Code.

4. In accordance with Section 206, any violations of a foreign order for protection shall be acted upon in the same manner as if the order for protection were issued by the Tribal Court and in accordance with the Violence Against Women Act.

5. Law enforcement and criminal justice system personnel shall enter valid foreign orders for protection in the tribal registry.

6. Law enforcement and criminal justice system personnel shall encourage persons possessing foreign orders for protection to file the foreign order with the tribal registry and initiate comity proceedings with the Tribal Court.

7. Facsimile copies shall be recognized as valid.

Section 314. Tribal registry for orders for protection.

1. The Tribal Court shall maintain a registry of all orders for protection issued by the Tribal Court. The clerk of court shall provide Public Safety dispatch center with certified orders for protection within 24 hours after issuance.

2. The clerk of court shall also provide the dispatch center with any modifications, revoked, withdrawn, and/or expired orders for protection.



3. The information contained in the registry is available at all times to a court, a law enforcement agency, and _____ [shelter].

4. Facsimile copies shall be recognized.

Section 315. Specific Applicability

The section herein applies specifically to this domestic violence code and takes precedence over any general laws of applicability.



CHAPTER 4

FAMILY AND CHILDREN

Section 401. Presumptions concerning custody.

In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that domestic violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of domestic violence. It is irrelevant, in determining whether the presumption applies, that the domestic violence occurred in the presence or outside the presence of the child.

Section 402. Factors in determining custody and visitation.

1. In addition to other factors that a court must consider in a proceeding in which the custody of a child or visitation by a parent is at issue and in which the court has made a finding of domestic violence:

- (a) The court shall consider as primary the safety and well-being of the child and of the parent who is the victim of domestic violence.
- (b) The court shall consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault, to another person.
- (c) The court shall also consider the perpetrator's overall lifestyle, including alcohol and other chemical use in determining custody and/or visitation.

2. If a parent is absent or relocates because of an act of domestic violence by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation.

Section 403. Presumption concerning residence of child.

In every proceeding where there is at issue a dispute as to the custody of a child, a determination by a court that domestic violence has occurred raises a rebuttable presumption that it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic violence in the location of that parent's choice, within or outside the confines of the Indian reservation.

Section 404. Change of circumstances.

In every proceeding in which there is at issue the modification of an order for custody or visitation of a child, the finding that domestic violence has occurred since the last custody determination constitutes a finding of a change of circumstances.



Section 405. Conditions of visitation in cases involving domestic violence.

1. A court may award visitation by a parent who committed domestic violence only if the court finds that adequate provision for the safety of the child and the parent who is a victim of domestic 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 an independent third person or agency.
 - (c) Order the perpetrator of domestic violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators as a condition of visitation.
 - (d) Order the perpetrator of domestic violence to attend and complete, to the satisfaction of the court, a program for chemical dependency.
 - (e) Order the perpetrator of domestic violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and the 24 hours preceding the visitation.
 - (f) Order the perpetrator of domestic violence to pay a fee to defray the costs of supervised visitation.
 - (g) Prohibit overnight visitation.
 - (h) Require a bond from the perpetrator of domestic violence for the return and safety of the child.
 - (i) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of domestic 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 violence to attend counseling or seek support services relating to the victim's status or behavior as a victim, individually or with the perpetrator of domestic violence as a condition of receiving custody of a child or as a condition of visitation.
5. Supervised visitation shall be conducted by an independent third party as approved jointly by the court and the victim.

Section 406. Specialized visitation center for victims of domestic violence.

1. _____, shall provide for visitation centers for victims of domestic violence and their children to allow court ordered visitation in a manner that protects the safety of all family members. _____ [shelter] shall coordinate and cooperate with local governmental agencies in providing the visitation centers.



2. A visitation center must provide:

- (a) A secure setting and specialized procedures for supervised visitation and the transfer of children for visitation; and
- (b) Supervision by a person trained in security and the avoidance of domestic violence.

Section 407. Mediation prohibited in cases involving domestic violence.

The court shall not order parties into mediation or any type of counseling, alternative justice, peace-making, circle sentencing, traditional Native ceremonies or any other mediation type of situation that would put the petitioner in the position of dealing directly with the respondent for resolution of the issues in a petition for custody, even if the petitioner has the right to refuse to participate

Section 408. Duties of juvenile court.

1. Within 120 days of the enactment of the Domestic Violence Code, the Tribal Juvenile Court shall develop written procedures when abuse or neglect of a child is involved to assess whether abuse of another family or household member is also occurring. The assessment must include but is not limited to:

- (a) Inquiry concerning the criminal record of the parents, and the alleged abusive or neglectful person and the alleged perpetrator of domestic violence, if not a parent of the child; and
- (b) Inquiry concerning the existence of orders for protection issued to either parent.

2. The Tribal Juvenile Court shall utilize the State Department of Social Services, any relevant tribal children's social and/or protective services and/or _____ [shelter] in conducting the assessment.

3. If it is determined in an investigation of abuse or neglect of a child:

- (a) That the child or another family or household member is in danger of domestic violence and that removal of one of the parties is necessary to prevent the abuse or neglect of a child, the Tribal Juvenile Court shall seek the removal of the alleged perpetrator of domestic violence whenever possible.
- (b) That if a parent of the child is a victim of domestic violence, services must be offered to the victimized parent and the provision of such services must not be contingent upon a finding that either parent is at fault or has failed to protect the child.

Section 409. Specific Applicability

The section herein applies specifically to this domestic violence code and takes precedence over any general laws of applicability.



CHAPTER 5

PREVENTION AND INTERVENTION

Section 501. Public health plan for reducing domestic violence.

1. The Tribal Health and Human Services Committee shall:
 - (a) Assess the impact of domestic violence on the public's health;
 - (b) Write a public health plan for reducing the incidence of domestic violence within the tribal community;

2. The public health plan:
 - (a) Must include but is not limited to public education, including use of the various communication media to set forth the public health perspective on domestic violence.
 - (b) Must be developed in consultation with public and private agencies that provide programs for victims of domestic violence, advocates for victims, and persons who have demonstrated expertise and experience in providing health care to victims of domestic violence and their children.
 - (c) Must be completed within 120 days of the enactment of the Domestic Violence Code.

3. The Health and Human Services Committee shall:
 - (a) Transmit a copy of the public health plan to the Tribal Council; and
 - (b) Annually review and update the plan.

Section 502. Standards for health care facilities, practitioners, and personnel; specialized procedure and curricula concerning domestic violence.

1. Within 120 days of the enactment of the Domestic Violence Code, the Indian Health Service shall promulgate standards for health care facilities, practitioners, and personnel in the facilities including specialized procedure and curricula concerning domestic violence.

2. The procedures and curricula must be developed in consultation with public and private agencies that provide programs for victims of domestic violence, advocates for victims, and persons who have demonstrated expertise and experience in providing health care to victims of domestic violence and their children.

Section 503. Notice of rights of victims and remedies and services available; required information.

1. The Indian Health Service and any other health care facility shall make available to practitioners and health care facilities a written notice of the rights of victims and remedies and services available to victims of domestic violence in accordance with subsection 3.
2. A practitioner who becomes aware that a patient is a victim of domestic violence shall provide to the patient and every health care facility shall make available to all patients the notice provided pursuant to subsection.



3. The notice to victims of domestic violence must be substantially as follows:
"if you are a victim of domestic violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that an officer assist in providing for your safety, including asking for an emergency order for protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you to a safe place including but not limited to a shelter, family member's or a friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. You may request a copy of the report at no cost from the law enforcement department.

You may ask the prosecutor to file a criminal complaint. You also have the right to file a petition in the Tribal Court requesting an order for protection from domestic violence, which could include any of the following orders:

- (a) An order enjoining your abuser from threatening to commit or committing further acts of domestic violence;
- (b) An order prohibiting your abuser from harassing, annoying, telephoning, contacting or otherwise communicating with you, directly or indirectly;
- (c) An order removing your abuser from your residence, regardless of ownership of the residence;
- (d) An order directing your abuser to stay away from your residence, school, place of employment, or any other specified place frequented by you and another family or household member;
- (e) An order prohibiting your abuser from using or possessing any firearm or other weapon specified by the court;
- (f) An order granting your possession and use of the automobile and other essential personal effects, regardless of ownership;
- (g) An order granting you custody of your child or children;
- (h) An order denying your abuser visitation;
- (i) An order specifying arrangements for visitation, including requiring supervised visitation; and
- (j) An order requiring your abuser to pay certain costs and fees, such as rent or mortgage payments, child support payments, medical expenses, expenses for shelter, court costs, and attorney's fees.

The forms you need to obtain an order for protection are available from _____.
The resources available in the community for information relating to domestic violence, treatment of injuries, and places of safety and shelters are:

_____ You also have the right to seek reimbursement for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other expenses for injuries sustained and damage to your property. This can be done without an attorney in small claims court if the total amount claimed is less than

4. The written notice:

- (a) Must not include the addresses of shelters, unless the location is public knowledge.
- (b) Must be provided in the native language of the victim, if practicable, when the first language of the victim is not English.



Section 504. Hospital required to provide certain information to parents.

Hospitals shall provide information concerning domestic violence to parents of newborn infants and to parents of hospitalized minors. The information must include but is not limited to the effect of domestic violence on children and available services for the prevention and intervention services available.

Section 505. Regulation of programs for intervention for perpetrators; required provisions; duties of providers.

1. Within 120 days of the enactment of the Domestic Violence Code, _____ [shelter] shall promulgate rules or regulations for programs of intervention for perpetrators of domestic violence. The rules or regulations must be promulgated after consultation with public and private agencies that provide programs for victims of domestic violence and programs of intervention for perpetrators, with advocates for victims, and with persons who have demonstrated expertise and experience in providing services to victims and perpetrators of domestic violence and their children.
2. The rules or regulations must include:
 - (a) Standards of treatment for programs of intervention;
 - (b) Criteria concerning a perpetrator's appropriateness for the program;
 - (c) Systems of communication and evaluation among the referring court, the public and private agencies that provide programs for victims of domestic violence and the programs of intervention for perpetrators; and
 - (d) Required education and qualifications of providers of intervention.
3. The standards must include but are not limited to the following principles:
 - (a) The focus of the program must be stopping the acts of violence and ensuring the safety of the victim and children or other family or household members.
 - (b) Recognition that violence is a behavior for which the perpetrator must be held accountable.
 - (c) Recognition that substance abuse is a problem separate from domestic violence which requires specialized treatment.



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4. Providers of programs of intervention for perpetrators:
 - (a) Shall require a perpetrator who is ordered into the program by a court to sign the following releases:
 - (1) Allowing the provider to inform the victim and victim's advocates that the perpetrator is in treatment with the provider, and to provide information of safety to the victim and victim's advocates;
 - (2) Allowing prior and current treating agencies to provide information about the perpetrator to the provider; and
 - (3) Allowing the provider to provide information about the perpetrator to relevant legal entities, including courts, probation officers, parole officers, and children's protective services.
 - (b) Shall report to the court and the victim any assault, failure to comply with the program, failure to attend the program, and threat of harm by the perpetrator.

Section 506. Continuing education for law enforcement officers concerning domestic violence; content of course.

1. The Department of Public Safety, Training Center must provide forty (40) hours of initial education to all prospective, newly hired, or law enforcement officers who have not had the required training concerning domestic violence.
2. The Department of Public Safety, Training Center shall provide eight (8) hours a year of continuing education concerning domestic violence to law enforcement officers each year.
3. The course of instruction and the objectives in learning and performance of the education of law enforcement officers required pursuant to subsections 1 and 2 must be developed and presented in consultation with public and private providers of programs of victims of domestic violence and programs of intervention for perpetrators, persons who have demonstrated expertise in training and education concerning domestic violence, as it relates to Native culture and the implementation of a coordinated systems and community response to enhance the safety and respect for Native women and families on the Indian reservation.
4. The course of instruction must include but is not limited to:
 - (a) The investigation and management of cases involving domestic violence and writing of reports in such cases;
 - (b) The nature, extent, and causes of domestic violence;
 - (c) Practices designed to promote the safety of the victims of domestic violence and other family and household members, including safety plans;
 - (e) The legal rights and remedies available to victims of domestic violence including but not limited to rights and compensations of victims of crime and enforcement of civil and criminal remedies;
 - (f) The services available to victims of domestic violence and their children;
 - (g) Sensitivity to cultural, racial, and sex" issues and the effect of cultural, racial and gender bias on the response of law enforcement officers and the enforcement of laws relating to domestic violence; and
 - h) The provisions of the Tribal code and any other laws and statutes applicable.



Section 507. Continuing education of judges and court personnel; prosecutors; content of course.

1. _____ [shelter] shall develop and present courses of continuing education concerning domestic violence for judicial officers, prosecutors, and other court personnel.
2. The courses must be prepared and presented in consultation with public and private agencies that provide programs for victims of domestic violence and programs of intervention for perpetrators, and advocates for victims.
3. Each judicial officer and each court employee who comes into contact with either party in domestic violence cases must have sixteen (16) hours of initial education in domestic violence and eight (8) hours annually.
4. The courses must include but are not limited to the following topics:
 - (a) The nature, extent, and causes of domestic violence;
 - (b) Practices designed to promote safety of the victim and other family and household members, including safety plans;
 - (c) Resources available for victims and perpetrators of domestic violence;
 - (d) Sensitivity to gender bias and cultural, racial, and sexual issues; and
 - (e) The lethality of domestic violence.

Section 508. Continuing education for tribal employees who work with domestic violence cases and are required to report abuse and neglect of children.

1. The Tribal Health and Human Services Committee shall provide courses of continuing education concerning domestic violence for tribal employees:
 - (a) Who work with cases of domestic violence; and
 - (b) Who are required by law to report abuse or neglect of children.
2. The courses must be prepared and presented in consultation with public and private agencies that provide programs for victims of domestic violence and programs of intervention for perpetrators, and advocates for victims.
3. The courses must include but are not limited to the following topics:
 - (a) The nature, extent, and causes of domestic violence;
 - (b) Practices designed to promote safety of the victim and other family and household members, including safety plans;
 - (c) Resources available for victims and perpetrators of domestic violence;
 - (d) Sensitivity to gender bias and cultural, racial, and sexual issues; and
 - (e) The lethality of domestic violence.
4. As used in this section, tribal employees working with cases of domestic violence include:
 - (a) Probation officers;
 - (b) Workers in children's protective services;
 - (c) Psychologists;
 - (d) Social workers;
 - (e) Advocates;
 - (f) CHR;



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- (g) Ambulance Service;
 - (h) Chemical Dependency personnel;
 - (i) EAP;
 - (j) Civil Rights Office.

Section 509. Continuing education for attorneys.

1. In order to be licensed to practice in any Tribal court, attorneys or legal advocates must participate in sixteen (16) of continuing legal education in domestic violence for attorneys. The Attorney General shall provide courses of continuing legal education in domestic violence for tribally licensed attorneys or attorneys applying for a Tribal attorney license.
2. The courses must be prepared and presented in consultation with persons who have demonstrated expertise and experience in providing legal assistance to victims and perpetrators of domestic violence, and advocates for victims.
3. The courses must include but are not limited to the following topics:
 - (a) The nature, extent, and causes of domestic violence;
 - (b) Practices designed to promote the safety of the victim and other family and household members, including safety plans;
 - (c) Resources available for victims and perpetrators of domestic violence-;
 - (e) Sensitivity to gender bias and cultural, racial, and sexual issues; and
 - (f) The lethality of domestic violence; and
 - (g) The Tribal domestic violence code and any other applicable laws and statutes.

Section 510. Required curricula for Indian reservation education system.

1. The Tribal Education Committee shall select or develop within one year:
 - (a) Curricula for pupils concerning domestic violence that are appropriate for various ages; and
 - (b) Curricula for school counselors, health-care personnel, administrators, and teachers concerning domestic violence.
2. The curricula must be selected or developed in consultation with public and private agencies that provide programs for victims of domestic violence and programs of intervention for perpetrators of domestic violence, advocates for victims, and persons who have demonstrated expertise and experience in education and domestic violence.
3. The curricula must include but are not limited to:
 - (a) The nature, extent, and causes of domestic violence;
 - (b) Issues of domestic violence concerning children;
 - (c) The prevention of the use of violence by children;
 - (d) Sensitivity to gender bias and cultural, racial, and sexual issues;
 - (e) Violence in dating and other social relationships of boys and girls; and
 - (f) Practices designed to promote safety of the victim and other family and household members, including safety plans.
 - (g) The Tribal domestic violence code and any other applicable laws and statutes.



Section 511. Continuing education for school personnel who are required to report abuse and neglect of children.

1. The Tribal Education Committee shall provide courses of continuing education concerning domestic violence for employees who are required by law to report abuse or neglect of children.
2. The courses must be prepared and presented in consultation with public and private agencies that provide programs for victims of domestic violence, persons who have demonstrated expertise in education and domestic violence and advocates for victims.
3. The courses must include but are not limited to the following topics:
 - (a) The nature, extent, and causes of domestic violence;
 - (b) Practices designed to promote safety of the victim and other family and household members, including safety plans;
 - (c) Issues of domestic violence concerning children;
 - (d) Sensitivity to gender bias and cultural, racial, and sexual issues; and
 - (e) The lethality of domestic violence.

Section 512. Specific Applicability

The section herein applies specifically to this domestic violence code and takes precedence over any general laws of applicability,



CHAPTER 6

STALKING

Section 601. The stalking provision of the Tribal Domestic Violence Code is construed to promote the following:

1. That the active stalking of women and family members is a basic and often primary activity used by domestic violence offenders to establish, or re-establish control over domestic violence victims. Through the pursuit or following of the victim by the perpetrator, the risk to the victim of being physically assaulted by the stalker is greatly increased. The goal of this section is in keeping with the overall purpose of the Tribal Code is to provide safety and protection to victims, potential victims, and to set standards of behavior within the family that are consistent with traditional Native values.

Section 602. Definitions

Unless the context otherwise requires, as used in the Tribal Code:

1. "Credible threat" means a verbal or written threat, or a threat implied by a pattern of conduct, or combination of such verbal/written statements and conduct, either directly or through a third party, made with the intent to place the person who is the target of the threat in reasonable fear of his/her safety. The main standard for establishing a credible threat is the victim's perception of a threat to his/her safety. The second criteria will be the apparent ability of the defendant to carry out the threat, whether verbal, written, or implied through a willful pattern of conduct. The third standard is the ability to identify and relate a pattern of corroborated stalking behavior.

2. "Harass" means a knowing and willful pattern of conduct directed at a specific person, either directly or through a third party, which seriously alarms, annoys, torments, or terrorizes the person, and which serves no legitimate purpose. Harassing behavior can include but is not limited to:

- (a) Vandalism;
- (b) Annoying or threatening telephone calls;
- (c) Following or other violations of an order for protection;
- (d) Actual Assaults;
- (e) Sending unwanted letters;
- (f) Sending unwanted messages or threats through third parties;
- (g) Showing up at a victim's home or workplace;
- (h) Attempting to obtain private information about the victim through others;
- (i) Leaving gifts for the victim;
- (j) Disabling or otherwise tampering with the victim's vehicle;
- (k) Taking mail from the victim's mailbox;
- (l) Entering the victim's home or place of residence whether the victim is there or not there;
- (m) Parking near or driving by the victim's residence or workplace for no legitimate reason;



(n) And, using agencies or institutions that constitutes a pattern of conduct consistent with retaliation by initiating investigations, restrictions or sanctions against the victim.

3. "Pattern of conduct" means conduct which has caused the victim to suffer substantial emotional distress or fear. This course of conduct should contain a series of acts carried out by the defendant over a period of time, however short, which demonstrates a continuity of purpose (i.e., to annoy, harass, follow, etc.), and which would cause a reasonable person to suffer like emotional distress or fear.

4. "Family" means any spouse, parent, child, stepparent, stepchild, grandparent, grandchild, or significant other person or relative with whom the victim has a familial relationship, or who resides with the victim or any other relationship as defined in Tribal Domestic Violence Code, Section 102.2.

5. "Corroborating stalking conduct" means any evidence of harassing behavior, physical evidence at the scene, records, documents, letters, unsubstantiated alibis, recorded messages, police reports, prior stalking convictions, witness information, or any other information, which would indicate a willful pattern of conduct or threat.

Section 603. Stalking; Offense defined and penalties

1. Any person who, either directly or through a third party, willfully, maliciously and repeatedly follows or harasses another person, and who makes a credible threat with the intent to place that person in reasonable fear of his/her safety, or the immediate safety of his/her family, shall be deemed guilty of stalking under this section and code. A person who makes a judicial admission of, pleads guilty to, or is found guilty of stalking shall be subject to a penalty of not less than thirty (30) and not more than sixty (60) days in jail, a fine not to exceed \$500. or both such fine and imprisonment.

2. Whoever makes a judicial admission of, pleads guilty to, or is found guilty of a second or subsequent offense, within five (5) years of the first offense, shall be subject to a penalty of not less than ninety (90) days in jail, a fine not to exceed \$500 or both fine and imprisonment.

3. A judicial admission, guilty plea, or conviction of a second or subsequent stalking offense, involving a credible threat to the same person, or in violation of a valid Order for Protection, shall be sentenced to a term of not less than six (6) months in jail, a fine not to exceed \$ 1,000 or both such fine and imprisonment.

4. In addition to the penalties stated in 1-3 above, any person making a judicial admission, pleads guilty or being found guilty of a violation of this section, will be required to attend and complete domestic violence classes, as conducted by _____ [shelter].



Section 604. Location of stalking perpetrator not bar to prosecution

1. The location of the threatening action by the perpetrator, either directly or through a third party, as corroborated through telephone records, postmarks, or order/delivery records, and/or witnesses as being outside the boundaries of the Indian reservation, will not bar prosecution under this section. The act is considered to be a credible threat when full transmittal of the threat has been completed to the victim, when said victim is within the boundaries of the Indian reservation.

2. Corroborated initial or intervening acts, used to establish a pattern of conduct for the purpose of probable cause under this section, but which occurred outside the boundaries of the Indian reservation, may be used to establish and corroborate said pattern for prosecution of a violation under this section. However, initial or intervening acts occurring outside the boundaries of Indian reservation are not prosecutable as separate offenses under this section.

3. The present incarceration of the person making the threat shall not bar prosecution under this section.

Section 605. Specific Applicability

The section herein applies specifically to this domestic violence code and takes precedence over any general laws of applicability.



CHAPTER 7

FIREARMS DISQUALIFICATION

Section 701. Purpose. It shall be the purpose of this section to prohibit any person who have been convicted of a felony or misdemeanor offense of domestic violence/abuse, as defined under Section 103 of this Domestic Violence Code, under tribal, state or federal law, or any person who is subject to an order of protection based upon a finding that the person represents a credible threat of violence to the victim, under tribal, state or federal law, to possess a firearm.

Section 702. It shall be unlawful for any person to possess a firearm who:

1. Is subject to any court order from a court of competent jurisdiction that restrains such person from harassing, stalking or threatening a family or household member as defined in Section 103.2 or engaging in any other conduct that would place a family or household member in reasonable fear of bodily injury to the household or family member, except that this paragraph shall apply only to those orders that:

- a. Were issued after a hearing of which such person received actual notice and had the opportunity to participate; and,
- b. Includes a finding that such person represents a credible threat to the physical safety of such household or family member; or
- c. By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such household or family member.

2. Has been convicted in state, federal or tribal court of any crime involving domestic violence/abuse, as defined in Section 103 of this code, which involved the use or attempted use of physical force, or the threatened use of physical force, or the threatened use of a deadly weapon against a household or family member as defined at Section 103.2.

Section 703. Violation of this Chapter is a Class Misdemeanor and shall result in a maximum sentence. Any related domestic violence sentences for a violation of this section and any other section of the Tribal Domestic Violence Code shall be served consecutively.



CHAPTER 8

DOMESTIC VIOLENCE ADVOCATES AND SHELTERS

Section 801. Protection for Advocates.

The Tribe recognizes that advocating for those who have been the victims of domestic violence can be a dangerous situation for the advocate because of the potential for violence on the part of the perpetrator. This Chapter makes it a crime for any person to harass, annoy or intimidate an advocate for a domestic violence victim with the intent to interfere with the rights of the victim of domestic violence to pursue any civil or criminal remedies she may have in a court of law. It also provides for an enhanced penalty for any person committing a crime of violence against an advocate because of her advocacy for a victim of domestic violence.

Section 802. Harassment of Domestic Violence Advocate

It shall be a Class _____ Misdemeanor for any person to commit any of the following acts with the intent to interfere with the right of any victim of domestic violence to obtain a civil protection order to pursue any criminal complaint against a perpetrator of domestic violence:

1. To make any written or verbal threats to an advocate for a victim of domestic violence with the intent to interfere with the right of any victim of domestic violence to obtain a civil protection order or pursue criminal charges against a perpetrator of domestic violence;
2. To make any written or verbal threats that place an advocate in apprehension of bodily injury because of that advocate's representation of a domestic violence victim.

Section 803. Enhanced Penalty for Crime of Violence Against Domestic Violence Advocate.

Any person convicted of a crime of violence under sections _____ of the tribal code against a domestic violence advocate in which the Tribe demonstrates that said crime was committed because of the victim's advocacy on behalf of the domestic violence victims shall in addition to any other penalty provided by tribal law be sentenced to an additional _____ days in the Tribal jail and ordered to pay a special assessment to the Domestic Violence Advocacy program in the amount of \$500.00. This enhanced penalty shall not be subject to suspension by the Court.



CHAPTER 9

DOMESTIC VIOLENCE LEAVE ACT

Section 901. Purpose.

Victims of Domestic Violence are oftentimes forced to flee from a perpetrator in order to avoid future danger and violence. In so fleeing, victims who are employed frequently miss days of employment and employers respond by terminating or disciplining such employees. It is the purpose of this chapter to preclude all reservation employers from terminating any employee who can document an instance of domestic abuse which contributed to her absence from employment. Employers have the option of granting such employees leave with pay or leave without pay because of domestic violence related absences.

Section 902. Discharges for Absence of Employment Due to Domestic Violence Prohibited.

It shall be a violation of this ordinance for any employer located within the exterior boundaries of the Indian reservation to terminate or otherwise discipline any employee who has missed work or is tardy to work when such employee demonstrates, either through the filing of criminal or civil proceedings in a court of law or by such other method satisfactory to the employer, that she has been the victim of domestic violence and that such violence contributed to her absence(s) from work or tardiness to work. In lieu of disciplinary action, the employer shall grant the employee leave with or without pay, dependent upon the policies of the employer, for such absences.

Section 903. Penalty for Violation.

Any employer who willfully violates this section shall be subject to a civil penalty of \$500.00 payable to the Tribe in addition to any other remedies the wrongfully discharged employee may have against the employer. Nothing in this section shall preclude a private party from commencing a wrongful termination action against an employer for violation of this section.



CHAPTER 10

VICTIM-ADVOCATE PRIVILEGE ACT

Section 1001. Findings and Purpose

The Oglala Sioux Tribe declares that the purpose of the Victim-Advocate Privilege Act, hereinafter referred to as the “Act,” is to extend to all victims (and their children) of domestic violence and sexual assault a testimonial privilege, encompassing the contents of confidential communications with an advocate of Cangleska, Inc. domestic violence intervention/prevention program or other victim advocacy/shelter/service program. It is the intent of this Act to acknowledge and address the irreparable harm inherent to victims of domestic violence and sexual assault in the disclosure of confidential information.

Because of the fear and stigma that often results from domestic violence and sexual assault and because of the fear of retaliatory violence by the perpetrator, many victims hesitate to seek help. Without assurances that communications made during the advocacy relationship will be confidential and protected from disclosure, victims will be even more reluctant to seek assistance or to confide openly with their advocates, thereby denying them full access to legal, economic and community resources.

This Act recognizes the important role of advocacy in the ability of victims to recover from the trauma of crime, achieve legal safeguards and safely access systems, community, and economic support/assistance essential so that the capacity for seeking safety is maximized.

Therefore, the Oglala Sioux Tribe therefore exercises its sovereign authority in providing for the safety and welfare of individuals within the exterior boundaries of the Pine Ridge Indian Reservation based upon a compelling public interest to protect the confidentiality of victims of domestic violence and sexual assault (and their children).

This Act shall render immune from discovery or legal process any records of such communications maintained by the advocacy program, without the informed and expressed written consent of the victim.

Section 1002. Definitions

1. “Advocate” is defined as an employee of, or volunteer for, a program for victims of domestic violence and/or sexual assault who:
 - (a) Has a primary function of rendering advocacy, counseling, or assistance to victims of domestic violence and/or sexual assault (and their children); supervising the employees or volunteers of the program; or administering the program;
 - (b) Has undergone a minimum of 40 hours of specialized advocate training; and,
 - (c) Works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program.
2. “Victim,” under this Act, is defined as any person who consults an advocate, elder, or medicine person for the purpose of securing counseling, information, support, or assistance



in connection with a commission, alleged commission, or attempted commission of an act of domestic violence or sexual assault against them. Designation as a victim, for the purpose of this Act, is not contingent upon the reporting of the act of domestic violence or sexual assault to law enforcement or other criminal justice authority.

3. “Confidential Information” is any information, whether written or spoken, which is transmitted between a victim of domestic violence or sexual assault and an advocate, in the course of the advocacy relationship, in private or in the presence of a third party who is present to facilitate any advice, report, notes, correspondence, memoranda, or working paper given or prepared by such advocate or victim in the course of the relationship with the victim. This includes any information that contains opinions, theories or other information generated while assisting the victim, or that is based on the communication between the victim and the advocate. Confidential communication also includes the name, address, telephone number, or current address of any person receiving services, or who has received services, as a victim of domestic violence or sexual assault.

4. “Domestic Violence” as defined under Chapter 9, Section 99.2 of the OST Criminal Code, Spouse Abuse.

5. “Sexual Assault” as defined under Chapter 9, Section 104.1 of the OST Criminal Code, Rape.

6. “Victim advocacy/shelter/service program” is any publicly or privately funded office, agency, program, project, shelter or center whose primary purpose is to provide services to domestic violence or sexual assault victims, except those affiliated with a law enforcement agency, office of the tribal prosecutor and/or court.

7. “Spouse,” for the purpose of this Act, is defined as any person who is currently, or formerly, married to another person by virtue of legal, traditional or recognized common-law bond, regardless of the age of the parties, and who would normally be subject to spousal testimonial and confidential communication privileges.

Section 1003. Victim-Advocate Privilege

A victim of domestic violence or sexual assault, an advocate, elder or medicine person has a privilege to refuse to disclose and may not disclose any confidential oral and written communication or observations between the victim and the advocate/elder/medicine person, and written records, reports, notes, and/or computer records concerning the victim, unless the privilege is waived by:

- (a) The informed and express written consent of the victim;
- (b) The death of the victim to whom the information applies.

The privilege attaches to any past or current victim-advocate relationship, regardless of the current or subsequent employment or professional status of the person who was the advocate at the time of the confidential communication.

An advocate, elder or medicine person cannot waive the protections afforded under this Act.



The privilege does not relieve a person from any duty imposed in the mandatory reporting of child abuse or neglect.

Section 1004. Violation of victim-advocate privilege; penalty

Violation of victim-advocate privilege by an advocate/shelter/service or any party identified in subsection III. A. of this Act shall constitute a misdemeanor offense and the violating party shall be subject to a jail sentence not to exceed 60 days and a fine of not less than \$100. and not more than \$500., plus costs and any such restitution as deemed proper by the Court.

The confidentiality privilege shall be construed to be a right of the victim and not the advocate/shelter/service. Therefore, the victim shall not be subject to prosecution for violation of the victim-advocate privilege.

Section 1005. Security and Confidentiality of Domestic Violence Advocate, Shelter, Service; Restrictions.

The security and confidentiality of Cangleska, Inc. or any other domestic violence victim advocacy/shelter/service program within the exterior boundaries of the Oglala Sioux Tribe shall be recognized by the court, law enforcement, and other service agencies as existing for the safety of victims of domestic violence and sexual assault. Advocates, shelter staff, or program staff will not substantiate, verify, or deny placement information or the whereabouts of any domestic violence victim, or any children involved, under the victim-advocate privilege.

Law enforcement officers and/or criminal investigators will contact the domestic shelter/program with any message for individual victims concerning investigations or victim information. Law enforcement officers will not coercion, duress, or intimidation of shelter staff or advocates to gain access to the shelter or information on the whereabouts of any victim. Any such attempt will be considered a violation of subsection III above, Victim – Advocate Privilege. Any law enforcement officer or criminal investigator violating, or attempting to violate, the Victim – Advocate Privilege shall be subject to such fine and jail time as set forth in subsection IV above. Any information gained from such an attempt or violation will not be admissible in any tribal court proceedings.

No judge or officer of the Oglala Sioux Tribal Court will issue or initiate any search warrant, pick-up order, summons, bench warrant or any notice of court proceedings specifying the domestic violence shelter/program as the individual’s residence and/or location. Nor shall the shelter or domestic violence shelter/program be named as a party in any court action involving individual victims that may or may not be receiving advocacy services from the domestic violence shelter/program.

While the domestic violence shelter/program may not be named as party to any individual’s court proceedings, an individual may give permission for a domestic violence shelter program advocate to obtain any criminal justice system information or pertinent paperwork on her behalf. Such action shall not be construed by the court or law enforcement to mean that the domestic violence shelter/program is party to any court proceedings, civil and/or criminal, between the two parties, nor that the shelter/program has assumed or can be construed to be the counsel of record in the proceedings at issue.



Section 1006. Spousal Privilege Inapplicable in Criminal Proceedings Involving Domestic Violence

The following evidentiary privileges do not apply in any criminal proceeding in which a spouse or other family or household member is the victim of an alleged crime involving domestic violence perpetrated by the other spouse:

- (a) The privilege of confidential communication between spouses.
- (b) The testimonial privilege of spouses.

Section 1007. Severability Clause

If any clause, section, or part of this Act is declared invalid by the tribal court, such shall not render invalid the remainder thereof, but shall be confined in its operation to the offending section.

Section 1008. Specific Applicability

The provisions, definitions, and restrictions of the Victim-Advocate Privilege Act apply specifically to this section of the Oglala Sioux Tribe Criminal Code and take precedence over any section or general laws of applicability.



COMMON TERMS

ABUSE: “to use wrongly or improperly; misuse... to treat in harmful, injurious, or offensive way,” when someone’s behavior or words *intentionally* hurts another. A combination of abusive behaviors escalates abuse to violence. Abuse occurs if behaviors stop someone from having choices over their body or life, i.e., takes control of another’s body or life.

There is a distinction between abuse and “having your way”. Not doing what someone wants you to do is not abuse, nor is making decisions about things you are responsible for without others’ approval or agreement. There are important differences between disrespect, inappropriate behavior and abuse.

ACCOUNTABILITY: batterer accountability means acknowledging and accepting responsibility for the use of violence (in all its forms) to control one’s partner. Acknowledgement requires honest self-examination and an open process of directly naming violent behaviors; this includes the batterer realizing the impact his violence has on his partner, children and other relatives. True accountability requires the batterer to accept the consequences of his behavior and significantly change his belief system from violent controlling behaviors to nonviolent resolutions centered in respect for women.

Accountability begins with examining our belief systems, behaviors and relationships. Relatives and/or friends must be responsible and accountable to women who are battered and strive to end violence. Holding the batterer accountable and providing safety to women and their children is part of our role as relatives.

As individuals and relatives, we need to honor the personal sovereignty of Native Women. Native people must examine and address the effects of colonization and the resulting internalized oppression that supports violence against women. Through a process of reclaiming traditional ways and beliefs, we can begin to eliminate violence against women.

Systems accountability: creating and enforcing laws, policies, procedures and protocols that provide safety and resources to women who are battered and uphold batterer accountability. Law, policy, procedure and protocol are the tools for providing safety and justice, as well as a means to uphold the sovereignty of women. A lack of systems accountability this leads to collusion (see collusion) and the re-victimization of women and their children.

ACQUAINTANCE RAPE: Most rapes are not committed by strangers but by individuals who know their victims, who have often accompanied the victim previously and were deemed safe or a friend. This phenomenon is called “acquaintance” or “date” rape. See rape.

ADJUDICATORY HEARINGS: held by juvenile/family court to determine whether a child has been maltreated or if another legal basis exists for the State to intervene and protect the child. Each state has its own terms and definitions in the jurisdiction provisions of its law. Depending on the state, a child may be subject to the juvenile court’s authority if s/he is: abused, battered and abused, abused or neglected, sexually abused, maltreated, dependent, deprived, abandoned, uncared for, in



need of aid, in need of services, in need of assistance, etc.

ADVOCACY/ADVOCATE: supports women who have been battered/raped. Advocates proactively assist and support women and their children by: listening and believing her, transporting and accompanying her to court, providing resources for her basic needs including housing. Advocacy takes place in numerous institutions including legal, medical and social service.

Advocates work with individual women, as well as with institutions to end violence against women and children. This means providing active leadership in Coordinated Community Response efforts to maintain the focus on women's safety and offender accountability. Advocates educate the public to raise consciousness and develop policies.

The goal of advocacy is to ensure a woman's safety and sovereignty, as well as offender accountability. Their work is based on the understanding that the battering of Native women is a result of colonization and oppression.

ANGER MANAGEMENT: a mental health model that teaches people to become aware of their anger and its impact on their bodies. It assumes anger is healthy, but is often expressed in unhealthy ways. "Healthy expression" is the hallmark of anger management; this approach assumes that domestic violence is caused by the inability to control one's anger. Battering is seen as an inability to express anger in a constructive way.

In general, anger management classes do not address the imbalance of power that exists between men and women, or the fact that participants' use of violence is aimed almost exclusively at their intimate partners.

Anger management fails to recognize that a batterer chooses the time, place, method and target for his violence. The batterer's anger is rarely displayed at work, or towards the boss. The target of his violent behavior is rarely someone who has more power and control than the batterer. Violence against one's partner is a not loss of control issue, which is usually a subtopic in these groups. Batterers select their victims, who are, in most cases, their female partners. They are not overcome by their anger rather they use violence quite consciously to maintain power and control.

Acting angry, stomping around, slamming things, yelling, etc., are tactics that batterers consciously use to send the message that everyone should be on guard and paying attention "or else." This is anger management; the batterer has a specific purpose in managing his anger—maintaining power and control over his partner.

Anger management programs often fail to make the connection between beliefs, feelings and behavior. Using violence is a conscious choice. Changing a batterer's beliefs about women, about men and their right to control their relationships, provides a framework that allows them to change their behavior.

BATTERED WOMEN'S JUSTICE PROJECT (BWJP): a program of MPDI that provides information and technical assistance on effective responses to domestic violence in the civil and criminal justice system. A toll-free line, where staff respond to specific requests for technical assistance from professionals in the field, is available.



BATTERING: an ongoing pattern of tactics aimed at maintaining power and control over another. The tactics of battering include all forms of abuse and violence: physical, sexual, emotional, mental and economic, along with methods of using children, ritual and cultural abuse, threats, intimidation, and coercion. Fear of physical harm and a losing one's life is a very real and constant threat for a woman who is battered, and results from the batterer's use of these tactics.

Battering goes beyond being a mental health issue—it is a violent crime and a violation of human rights. Stress and anger management approaches make the assumption that both parties have equal power and control. Honest communication by a victim to her batterer often makes her vulnerable to more violence. A batterer's goal in communication is to establish power and control over his partner, not mutual understanding and caring.

BUREAU OF INDIAN AFFAIRS (BIA): the first Federal agency established to work with American Indian and Alaskan Native tribes in a government to government relationship. The BIA is a decentralized organization with a central office in Washington, D.C., and has 84 administering agencies at the reservation level through eleven area offices: Anadarko, Aberdeen, Albuquerque, Billings, Eastern, Juneau, Minneapolis, Navajo, Phoenix, Portland and Sacramento.

BUREAU OF JUSTICE STATISTICS (BJS): BJS collects, analyzes, publishes and disseminates information on crime, criminal offenders, victims of crime and the operation of justice systems at all levels of government. This data provides Federal, State, and local policy makers statistics to combat crime, guaranteeing justice is both efficient and evenhanded.

BW: acronym for Battered Women.

CANGLESKA, INC: a private non-profit tribally chartered organization, located within the boundaries of the Oglala Lakota Nation, Pine Ridge Indian Reservation, SD. Cangleska, Inc. is a nationally recognized organization, providing domestic violence and sexual assault prevention/intervention services. This organization facilitates the Coordinated Community Response to domestic violence and sexual assault for the Oglala Lakota Nation.

CHILD PROTECTIVE SERVICES (CPS): the social service agency (in most states) designated to receive reports, investigate and provide rehabilitation services to children and families with problems of child maltreatment. Frequently, this agency is located within larger public social services agencies, such as Departments of Social or Human Services.

CHILD WELFARE: anything that has to do with the welfare of the child: child abuse, failure to protect, truancy, neglect, juvenile issues, etc.



CIRCUIT COURT: courts of appeal that encompass several jurisdictions.

CIRCUIT-RIDING JUDGE: a court of appeals judge that travels to different jurisdictions.

CODE OF FEDERAL REGULATIONS (CFR) COURT—COURTS OF INDIAN

OFFENSES: established in Indian country, CFR Courts are not tribal courts, but are Federal instrumentalities that have been established at the request of an Indian Nation or in certain situations where Indian courts are not operating. The judge is a federal magistrate and federal rules of procedure and evidence are used. CFR Courts are subject to the authority of both the tribal council and the Department of the Interior. The council may adopt ordinances or resolutions affecting CFR Court but ultimately the Department of the Interior must approve them.

COLLUSION: any act that intentionally or unintentionally supports bad, deceitful, or illegal behavior. In terms of battering it is any act that discounts, condones or ignores any of the tactics that batterers use to maintain power and control over their partner. Colluding results in an increased danger to the woman/victim, her children, family and friends; the woman must now protect herself, her children and relatives from the batterer, as well as from those that collude with him. Those that collude re-victimize her.

Collusion makes the batterer more powerful by reinforcing his use of abusive and violent tactics. It allows him to enlist other people and systems to assist him in controlling his partner, creating more barriers and eliminating support, resources, and safe places that battered women need to escape violence.

Collusion prevents batterer accountability. If not held accountable, the batterer continues to use violence not only against his partner and other relatives, but against his own spiritual being. Everyone continues to suffer.

Examples of Collusion:

1. Not arresting when there is probable cause or charging lesser crimes.
2. Not determining who is the predominate aggressor and making dual arrests.
3. Buying into his minimizing, denying and blaming: “I was drunk.” “I just shoved her.” “I was abused as a child.” “She hit me first.” “She's got PMS/is sick/a bad mother, so I...”
4. Acting as if violence against the mother is not child abuse.
5. Acting as if his violent behavior and use of power and control tactics is a “private family matter,” not confronting him at work, socially, etc.
6. Saying things like: “Well, you should see how she keeps house/looks at other men/talks to him,” “She gets drunk all the time.” or “She verbally abuses him.”
7. Laughing at his jokes and stories about her that are demeaning, embarrassing or humiliating to her.
8. Not telling him this behavior is disrespectful and unacceptable.
9. Not acting when you know she is being abused and beaten. Pretending you didn't hear, see or know what's going on.
10. Not confronting him about his internalized oppression when he says sexist or other oppressive things.



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11. Not providing her resources or making her justify her survival skills and requests for help.
 12. Telling her that she needs to change or that she has a problem too or that in some way she provokes/deserves the violence. “Yes, his behavior is bad, but you...”
 13. Not having resources, policies, procedures and protocols in place that provide her safety (including safety in the workplace).

COMITY: In the absence of treaties providing for mutual recognition and enforcement, states are free to recognize the judgments of foreign countries on the basis of “comity”. As a matter of comity, mutual respect, and cooperation among sovereign nations, states recognize judgments of foreign countries provided that the foreign country’s court had proper jurisdiction and that it employed fair procedures in adjudicating the case.

CONFIDENTIALITY: The safety of Native women who have been battered should be of utmost concern for advocates, law enforcement, court personnel and prosecutors. The key to providing safety for a woman is ensuring the confidentiality of information she provides, especially in regards to her identity and location.

CONFLICT: conflict is not the same as violence or abuse. The dictionary definition of conflict is “to come into collision or disagreement; be contradictory, at variance, or in opposition; to clash”.

When two people disagree, have opposing or contradictory views, they experience conflict. Conflict can be good. It motivates us to think, grow, compromise or accomplish our task another way.

If someone’s intention is to “win”, rather than resolve differences through dialogue and compromise, conflict can move from a mutual disagreement to abuse or violence.

COORDINATED COMMUNITY RESPONSE (CCR): an interagency effort, which prioritizes the safety and integrity of women and their children along with batterer accountability. This effort promotes the spiritual and cultural traditions of the sacredness of women and children. The outcome of a CCR is the establishment of policy, procedure and protocol to consistently promote the safety of women and the accountability of men who batter, through the systems involved. This initiative hinges on the leadership and expertise of women who have been battered.

COURT APPOINTED SPECIAL ADVOCATE (CASA): a specially screened and trained volunteer appointed by the court to conduct an independent investigation of child abuse or neglect and submit a formal report proffering advisory recommendations as to the best interests of the child.

CROSS-DEPUTIZATION: to be deputized in more than one jurisdiction. For example, a tribal police officer might also be deputized with the county and thereby be able to make arrests in either jurisdiction.



CYCLE OF VIOLENCE: one of the first attempts to describe the dynamics of battering. This theory postulates that battering occurs in three cyclical stages: tension building, beating, and the honeymoon”. Many women found similarities between the reality of their experience and this theory, in regards to the beginning of the relationship with their batterer.

The cycle of violence theory is generally no longer accepted because: a) it does not explain why battered women seek help from systems and systems fail to respond, b) it assumes that violence facilitates intimacy within the relationship, c) it assumes that the batterer doesn’t have control over his emotions and behaviors, affirming the idea that violence is an impulsive action, d) it assumes battered woman have the power to de-escalate his behaviors or control conflicts during the tension building stage.

In the last 25 years, much has been learned from the experts—women who have experienced battering. The “tension building” stage discounts violence as a choice; it says violence can be averted by stress reduction and relaxation skills. The “beating” stage discounts much of the violence women experience, acknowledging only the physical manifestation, portraying it as an isolated event that happens every so often. The “honeymoon” stage ignores the fact that the woman has been physically, emotionally, mentally and spiritually beaten and is not in a position to say “no”.

Less than 50% of battered women report having experienced anything resembling a “honeymoon stage”, which asserts that after a violent incident the batterer feels remorse, apologizes and gives gifts. Many battered women responded that that was not their experience. Quite the contrary, after the incident, many said they were blamed in some way for the violence. Women who did experience a “honeymoon stage” related that this stage ends earlier in the relationship and the violence worsens.

Defining battering as a systematic pattern of violent and abusive behaviors aimed at maintaining power and control over the batterer’s partner helps assure realistic responses to ending the violence.

DATE RAPE: see “ACQUAINTANCE RAPE”.

DISTRICT COURT: a court that exists within a specific geographic area.

DOMESTIC ABUSE INTERVENTION PROJECT (DAIP): a program of Minnesota Program Development, Inc. that coordinates an interagency effort in Duluth, MN to change the climate of tolerance toward battering by institutionalizing practices and procedures which centralize victim safety and offender accountability in domestic assault related cases. Agencies involved include 911, the police department, jail, sheriff’s department, probation, prosecutor’s office, women’s shelter, public health nurses and several mental health agencies.

DOMESTIC VIOLENCE (DV): a concept with various names, such as wife beating, spousal abuse, intimate partner violence, battering, partner abuse or interpersonal violence. It has varying definitions depending on the context in which it is used. The clinical or behavioral definition is



usually more comprehensive than its legal definitions. According to this broader definition, domestic violence is a pattern of assaultive and coercive behaviors, including physical, sexual, and psychological attacks, as well as economic coercion that adults or adolescents use against their intimate partners. It typically does not include child abuse, child-to-parent violence, or sibling violence, which are considered forms of family violence. Although the narrower legal definitions of domestic violence vary from state to state, they usually do not include economic coercion or the many types of psychological abuse included in the clinical definition.

DOJ or USDOJ: acronym for the United States Department of Justice

EMPOWERMENT: language sometimes used to describe the purpose of advocacy. This concept is compatible with the understanding that violence against women is about power and control. It avoids the mistaken notion that women who are battered cause or in some way contribute to the violence or that they are “ill” or have pre-existing personality defects that cause them to be battered.

Empowerment is about supporting women in a way that models respect and autonomy, a belief that women are experts about themselves and their lives. Battered women have the right to define what help they want, when they want it and who they want to provide it.

FAILURE TO PROTECT: generally refers to a parent’s “failure to protect” their children from harm or neglect. Unfortunately, this notion affects some battered women when they are accused of failure to protect when they “allow” themselves to be beaten in front of their children, or when the batterer beats the children. When this occurs, the system colludes with the batterer by refusing to hold him accountable. Holding the battered woman responsible for the batterer’s use of violence will not stop the violence.

FAMILY PRESERVATION/REUNIFICATION: established in law and policy, family preservation and re-unification is the philosophical belief of social services agencies that children and families should be kept together if the safety of the children can be ensured.

FEDERALLY RECOGNIZED TRIBE: “Recognition” is a legal term meaning that the Federal government recognizes a government-to-government relationship exists between the tribe and the United States government. An Indian Nation exists politically in what is termed a “domestic dependent” nation status. Federally recognized Indian Nations benefit from this trust relationship and have limited state jurisdiction on Indian land with the rights to self-government.

FULL FAITH AND CREDIT (FF&C): The Full Faith and Credit provision of the Violence Against Women Act requires states and Indian tribes to enforce valid protection orders issued by foreign states and Indian tribes as if the orders had been issued by the non-issuing, enforcing state or Indian tribe.



FVPSA: acronym for the Family Violence Prevention Act of 1984.

GUARDIAN AD LITEM (GAL): a court-appointed individual who appears on behalf of a child's best interests in a legal proceeding. The Child Abuse Prevention and Treatment Act of 1974 requires states to appoint a GAL for children involved in juvenile court dependency proceedings as a condition for receiving federal funds. All states have enacted legislation requiring GAL representation for some or all children involved in juvenile court dependency proceedings. States vary greatly; however, in how the representation should be provided, who can serve as a GAL, how that person should be trained, and what role the GAL should play.

INDIAN CHILD WELFARE ACT (ICWA): enacted in 1978 in recognition of the need to stem the "removal, often unwarranted" of Indian children from their families. The ICWA established "minimum Federal standards" to ensure that the values of Indian people are reflected in the foster care and adoptive placements of Indian children and the preservation of Indian family units. ICWA strengthens the role played by tribal governments in determining the custody of Indian children and specifies that preference should be given to placements with the extended family, then to Indian foster homes. Grants allow tribes and Indian organizations to deliver preventive services were authorized, but not funded.

INDIAN CIVIL RIGHTS ACT (ICRA): passed in 1968, ICRA made certain provisions of the US Bill of Rights applicable to Indian Court proceedings. This has caused some consternation that the imposition of American standards of due process and other judicial notions would place traditional Indian jurisprudence in jeopardy.

INDIAN COUNTRY: 18 USC 1151 defines "Indian Country" as "(a) all Indian lands within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

INDIAN HEALTH SERVICES (IHS): an agency within the US Department of Health and Human Services that is responsible for providing federal health services to American Indians and Alaska Natives. The provision of the health services to members of federally recognized tribes grew out of the unique government to government relationship between the federal government and Indian tribes. This relationship, established in 1787, is based on Article I, Section 8 of the Constitution, and has been given form and substance by numerous treaties, laws, Supreme Court decisions, and Executive Orders.

INTERNALIZED OPPRESSION: oppression is the unjust exercise of authority and power by one group over another, and includes the imposition of one group's belief system, values and life ways on another group. Oppression becomes internalized when we come to believe and act as if the



oppressor's belief systems, values and life ways are a necessary reality.

Internalized oppression is also called “self-hate”, “internalized sexism”, “internalized racism” and “lateral” or “horizontal” violence.

Internalized oppression in Indian country is the result of colonization, and one of the most powerful weapons of oppression. It causes feelings of shame, and ultimately, the disowning of one’s individual and cultural reality. Internalized oppression is the root of violence against women and children and other relatives, alcoholism, and the destruction of self and others.

Internalized oppression is an effective means of keeping Indian people under control. The oppressor no longer needs to exert physical control, because the oppressed group acts out the oppressor’s role on one another. “Divide and conquer” works. Internalized oppression can be resisted by examining internalized dominant culture beliefs and reclaiming traditional ways that support living respectfully without violence.

IN OUR BEST INTEREST (IOBI): an educational curriculum for survivors of domestic violence based on the work of Paulo Freire. The curriculum is based on the belief that battering is not an individual woman’s problem, but a societal problem linked to the oppression of all women in our society. MSH-TA has recently developed an IOBI curriculum designed to work specifically with the unique issues that Indian women face: *Nin Gikenoo Amadimin: We Teach Each Other*.

INDIAN RE-ORGANIZATION ACT (IRA): passed in 1934, the IRA had four main points: the repudiation of allotment policy, the re-establishment of Indian governments, the establishment of Indian business corporations and Indian preference in BIA hiring.

LE: acronym for Law Enforcement

MAJOR CRIMES ACT: passed in 1885, this act extended federal court jurisdiction over felonies committed by Indians on Indian lands, “thereby ending exclusivity of tribal jurisdiction in such matters.”

MARITAL RAPE: to force one’s spouse to submit to sexual intercourse against her will.

MEN'S RE-EDUCATION: focuses on batterer accountability and women’s safety through examining the batterer’s belief system and behaviors. For Native people, violence against women results from internalized oppression (i.e., colonization). Therefore, this approach is framed in a historical/cultural context. The term “re-education” acknowledges that violence against Native women is a learned behavior and nonviolence and respect for women can be re-learned as an integral part of Native life ways.

Developed as an alternative to earlier approaches, such as anger management, that did not identify violence against women as a crime resulting from colonization and oppression. This approach addresses battering as a system of tactics aimed at asserting and maintaining power and control.



MENDING THE SACRED HOOP (MSH): a program of MPDI founded in 1990 by a group of Indian advocates and community members from the Fond du Lac Reservation who were concerned about the level of violence against Indian women. MSH was formed to develop a CCR intervention model that coordinates reservation and non-reservation agencies to work collectively on policy and procedure changes through a Council on Non Violence, which consists of judges, prosecutors, probation officers, law enforcement, public defenders, advocates, counselors, reservation service providers and representatives of the business community. MSH also works to educate off reservation court systems and law enforcement agencies on myths and beliefs about Indian people and domestic violence, and provides training to reservations on developing coordinated community response intervention programs.

MENDING THE SACRED HOOP STOP VIOLENCE AGAINST INDIAN WOMEN TECHNICAL ASSISTANCE PROJECT (MSH-TA): a program of MPDI that provides training and technical assistance to Indian reservations across the country. MSH-TA's mission is "to assist Native Sovereign Nations to improve their response to Indian women who are victimized by domestic violence and sexual assault and to restore safety and integrity to them."

MINNESOTA PROGRAM DEVELOPMENT, INC. (MPDI): a nonprofit corporation formed in Duluth, MN, in 1980 to improve the status of women through education and social change. MPDI's work is based on two basic philosophical principles. First, violence is almost always an attempt to assert power, regardless of whether it is used by someone with too much power or someone with too little power; it functions to assert one's will in order to dominate. Secondly, unless we work to balance power between men and women, Native and non-Native American people, the rich and the poor, we cannot eliminate the use of violence in our society. Working to end violence must include the attempt to expose and change the power relationships that underpin the violence.

NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION (NAICJA): a national voluntary association of tribal court judges. NAICJA is a non-profit corporation established in 1969, which is primarily devoted to the support of American Indian and Alaska Native justice systems through education, information sharing and advocacy. The mission of the Association, as a national representative membership organization, is to strengthen and enhance tribal justice systems.

NATIONAL COALITION AGAINST DOMESTIC VIOLENCE (NCADV): NCADV is dedicated to the empowerment of battered women and their children and committed to the elimination of personal and societal violence in the lives of battered women and their children.

NCADV's work includes coalition building at the local, state, regional and national levels, support for the provision of community-based, non-violent alternatives (such as safe homes and shelter programs for battered women and their children), public education and technical assistance, policy development and innovative legislation, focus on the leadership of NCADV's caucuses and task forces developed to represent the concerns of organizationally under-represented groups and efforts to eradicate social conditions which contribute to violence against women and children.



NATIONAL INSTITUTE OF JUSTICE (NIJ): a component of the Office of Justice Programs. Created by the Omnibus Crime Control and Safe Streets Act of 1968, as amended, NIJ is authorized to support research, evaluation and demonstration programs, the development of technology and both national and international information dissemination.

NATIONAL TRAINING PROJECT (NTP): the training component of MPDI that provides training, technical assistance and materials to other communities implementing programs similar to the DAIP. The NTP conducts trainings both in Duluth and around the country. The NTP generates funding for MPDI’s service programs and offers ongoing technical assistance to organizations working to end violence.

NWTCJA: acronym for the Northwest Tribal Court Judges’ Association

OFFICE ON VIOLENCE AGAINST WOMEN (OVW): created in 1995 to implement the 1994 VAWA and to lead the national effort to stop violence against women: domestic violence, sexual assault and stalking. The OVW works with U.S. Attorneys to ensure enforcement of the federal criminal statutes contained in the 1994 Act, assists the Attorney General in formulating policy related to civil and criminal justice for women and administers grants to help states, tribes and local communities transform the way in which criminal justice systems respond to violent crimes against women.

OPPRESSION: the unjust exercise of authority and power by one group over another. Oppression includes forcibly denying people their individual, cultural and spiritual ways, while imposing the oppressor’s values and belief systems. The historical oppression of Native people includes the denial of both personal and tribal sovereignty.

ORDER FOR PROTECTION (OFP): an order issued by the court restraining the conduct of a person and protecting a victim from the activities of an abusive person. The terminology used differs from state to state—OFPs, restraining orders and protective orders are all terms used for such an order.

A “Temporary Restraining Order” (TRO) is ordinarily used after an “ex parte appearance” (an appearance in court by one party without the other being present). The Temporary Restraining Order is an order of the court that states that someone must refrain from particular acts and stay away from particular places.

A TRO becomes effective only once it has been served on the restrained person (so he may have notice and can seek an opportunity to be heard). In addition to the TRO, an “Order to Show Cause” hearing is scheduled so that both parties have the opportunity to explain to the court the reasons why a more “permanent” restraining order should or should not be issued.



Once the TRO and Order to Show Cause have been served on the person to be restrained, a hearing can be held to determine whether there is sufficient cause for a court to issue a more “permanent” restraining order. Based upon the evidence presented at this hearing, a court can order the restrained person from engaging in certain acts and from being in certain places (such as the victims’ residence and place of employment). After a hearing, a Restraining Order can remain in effect for a period of time, even several years. This “Restraining Order After Hearing” can be renewed for additional periods of time upon application by the protected person, and its duration may become permanent.

PERSONAL SOVEREIGNTY: Native women’s personal sovereignty is defined as a woman’s possession of, or right to:

- 1) Their bodies and paths in Life: the possession and control is unquestioned and honored by others. To exist without fear, but with freedom.
- 2) Self-governance: the ability and authority to make decisions regarding all matters concerning themselves, without others’ approval or agreement. This includes the ways and methods of decision-making in social, political, and other areas of life.
- 3) An economic base and resources: the control, use and development of resources, businesses or industries that Native women choose. This includes resources that support individual Native women’s chosen life ways, including the practice of spiritual ways.
- 4) A distinct identity, history and culture: each Native woman defines and describes her own history, including the impact of colonization, racism and sexism, tribal women’s culture, worldview and traditions.

PL 280 (PUBLIC LAW 280): a federal statute passed in 1953 and enacted in the termination era, through which some states (California, Minnesota, Nebraska, Oregon, Wisconsin, Alaska) were given greater authority over Indian reservations. PL 280 is an unfunded mandate that transferred legal power from the federal government to state governments and significantly changed the division of legal authority among tribal, federal and state governments.

According to Jerry Gardner and Ada Pecos Melton, “Public Law 280 has generally brought about (1) an increased role for state criminal justice systems in ‘Indian country’ ... (2) a virtual elimination of the special federal criminal justice role (and a consequent diminishment of the special relationship between Indian Nations and the federal government), (3) numerous real and perceived obstacles to individual Nations in their development of tribal criminal justice systems, and (4) an increased and confusing state role in civil related matters. Consequently, Public Law 280 presents a series of important issues and concerns for Indian country crime victims and for those involved in assisting those crime victims.”

POST-TRAUMATIC STRESS DISORDER (PTSD): PTSD is three reactions at once, all caused by an event that terrifies, horrifies or renders one helpless. The triad of disabling responses is:

- 1) recurring intrusive recollections;
- 2) emotional numbing and constriction of life activity; and
- 3) a physiological shift in the fear threshold, affecting sleep, concentration and sense of



security.

By definition in DSM IV (the official lexicon of psychiatric diagnoses, written and published by the American Psychiatric Association), this syndrome must last at least a month before PTSD can be diagnosed. Furthermore, a severe trauma must be evident and causally related to the cluster of symptoms.

POWER AND CONTROL TACTICS: a system of ongoing, purposeful behavior used to maintain power and control over another. These tactics can range from psychological abuse such as threats and attacks on someone’s self-esteem, to stalking, to sexual abuse, to isolation and physical violence—battering. Power and control is the goal of battering. Battering is the systematic use of power and control tactics. Issues of self-esteem, childhood experiences and lack of coping or communication skills are minimally relevant to changing a batterer’s behavior. Battering is about individual behavioral choices that are supported by individual and societal belief systems.

PREDOMINANT AGGRESSOR: used in making mandatory domestic violence arrests to indicate that only one person should be arrested (in 99.9 percent of the cases). It gives officers the responsibility of determining who has the most potential for doing the most harm, what was done in self-defense and prevents “equalizing” the violence or leaving it up to the judge.

PRINCIPAL/PRIMARY AGGRESSOR: language similar in intent to “predominant aggressor” that allows the officers to arrest “secondary” aggressors (i.e. the victim) rather than making determinations about actions taken in self-defense and who has the potential for most harm. Principal/primary aggressor policies have the potential to “equalize” the violence, holding the victim and perpetrator accountable.

PROBABLE CAUSE: defined in Black’s Law Dictionary as “the existence of circumstances that would lead a reasonable and prudent person to believe in the guilt of the suspect.” The existence of probable cause is the determining factor in making a mandatory arrest. It does not require officers to find grounds to convict on the spot, but includes fear of imminent harm. The intent of probable cause is to prevent re-assaults and possible homicides.

RAPE: to force another to submit to sexual intercourse. Often seen as a crime that is exclusively about sex, rape is in fact more about power and control than it is about sex.

REASONABLE EFFORTS: required by most state law, a state’s child welfare agency must make reasonable efforts to keep the family together or, if the child has already been removed, to reunify the family. Before a state may receive federal financial support for the costs resulting from a child’s removal from home into out-of-home care, a judge must determine that reasonable efforts have been made to deep the family together. Similarly, placement may not be continued with federal support without a finding by the judge that such efforts have been made to reunite the family.



REGIONAL DEVELOPMENT: a long-term plan to create a network of tribal domestic violence and sexual assault programs to enhance the resource base available to tribal programs and provide support to further the efforts to end violence against women within a certain geographic area.

RESTORATIVE JUSTICE: the main tenets of restorative justice are:

- 1) to enable offenders to make amends to their victims and community.
- 2) to increase offender competencies.
- 3) to protect the public through processes in which individual victims, the community and offenders are all active participants.

Some examples of restorative justice include Peacemaker Courts, Circle Sentencing, Family Group Conferencing and Sentencing Circles.

There are concerns that restorative justice models can be dangerous to battered women. A woman who has been battered does not enter the process on an equal footing with her batterer—she might be justifiably afraid to be honest about the abuse. There is also the concern that society is not yet ready to uphold the standards of respect for women and surrounding issues that are necessary to keep women safe in this process.

SACRED CIRCLE: a project of Cangleska, Inc., located in Rapid City, SD, that provides resources to: increase Indian Nations’ capacity to provide direct services and advocacy to women and their children victimized by battering and sexual assault through technical assistance, model programming, training and information that is culturally relevant.

The mission of Sacred Circle and Cangleska, Inc., is to change individual and institutional beliefs that justify the oppression of Native women. The work to transform tribal families and communities into a circle of balance and harmony requires individual growth and systemic responsibility. Sacred Circle is dedicated to actions promoting sovereignty and safety of women.

SAFE: acronym for Sexual Assault Forensic Examiners – formerly called Sexual Assault Nurse Examiners.

SAFETY: means being protected from violence in all forms, everywhere. It means having power and control over your life and body. It includes respectful support and access to resources without barriers. It includes being treated as a relative, not as “sick”, “crazy”, or “co-dependant”. It means having your personal sovereignty honored.

SAFETY PLAN: an individualized plan battered women develop to reduce the risks they and their children face. These plans include strategies to reduce the risk of physical violence and other harm caused by a batterer, as well as strategies to maintain basic human needs such as housing, health care, food, childcare and education for children. The particulars of each plan vary depending on



whether a woman has separated from the batterer, plans to leave or decides to stay, as well as what resources are available to her.

SART: acronym for Sexual Assault Response Team.

SEXUAL ASSAULT (SA): see “RAPE”; sexual assault also embodies all actions that violate someone sexually, whether or not penetration is involved.

SHELTER: a place that provides:

- Safety and protection from violence;
- Advocacy to support the personal sovereignty of women and hold the batterer responsible for his violence;
- As many resources as possible to create a non-violent life;
- Respectful, non-judgmental support;
- Legal, medical and social advocacy;
- Accurate information;
- Transportation and accompaniment to court and resources;
- Confidentiality;
- Time and space to rest;
- Support in making decisions;
- Support in caring for children;
- Freedom to choose;
- An understanding of battering as a crime, not a personal failure of the woman;
- Advocates that believe in women’s abilities to know what they need;
- Religious freedom;
- Freedom to return to the abuser without giving up other rights;
- Advocacy that informs Coordinated Community Response efforts hold batterers and systems accountable to women who have been battered.

SOVEREIGNTY: tribal sovereignty means all tribal nations possess or have the right to: 1) A land-base; 2) self-government; 3) an economic base and resources; 4) a distinct language and historical and cultural identity.

According to Felix Cohen, “[Indian sovereignty] is the principle that those powers which are lawfully vested in Indian Nations are not, in general, delegated powers granted by express Acts of Congress, but rather inherent powers of a limited sovereignty which have never been extinguished. Each Indian Nation begins its relationship with the Federal government as sovereign power, recognized as such in treaty and legislation.”

STALKING: defined as harassing or threatening behavior that an individual engages in repeatedly, such as following a person, appearing at a person’s home or business, making harassing phone calls, leaving written messages or objects or vandalizing a person’s property. These actions



may or may not be accompanied by credible threats of serious harm; they may or may not be precursors to an assault or murder.

STOP: acronym for Services Training Officers Prosecutors; STOP grants come out of the Omnibus Crime Bill of 1994, of which VAWA is part. STOP refers to how VAWA funding is to be spent.

SURVIVOR: a term many women who have been battered or sexually assaulted use to describe themselves. It indicates a person who has experienced a violent, life-changing crime, but is regaining power and control over her life. It is a life-affirming term.

TA: acronym for Technical Assistance

TERMINATION OF PARENTAL RIGHTS HEARING: a legal proceeding to free a child from a parent's legal custody so that the child can be adopted by others. The legal basis for termination of rights differs from state to state but most consider the failure of the parent to support or communicate with the child for a specified period (extreme parental disinterest), parental failure to improve home conditions, extreme or repeated neglect or abuse, parental incapacity to care for the child, and/or extreme deterioration of the parent-child relationship. In making this finding, the court is determining that the parents will not be able to provide adequate care for the child in the future by using a standard of clear and convincing evidence. This burden of proof is higher than a preponderance of the evidence which is used in civil abuse or neglect cases where termination is not sought.

TFYS: acronym for Tribal Family and Youth Specialist in Alaska.

TRADITIONAL COURTS: courts found only among the New Mexico Pueblos that are based wholly within the Pueblo tradition. There is seldom a written code; procedure is based in a common understanding rather than written rules of court. The judge is the governor of the pueblo, sometimes with members of the council sitting with him. American notions of jurisprudence are given no weight in the traditional courts. Peacekeeping forums usually involve elders or community leaders to facilitate family gatherings and/or talking circles. Customary laws, sanctions, and practices are used to resolve the problem(s). Offender compliance is obligatory and monitored by the families involved.

TRIBAL COURTS: courts created by tribal constitution or other Indian authority that enforce the laws of the Indian Nation found in the tribal code. For the most part, tribal courts have adopted rules of procedure and evidence, have an appeals process and generally conduct themselves in a manner very similar to the federal or state courts.

TRO: acronym for Temporary Restraining Order – see “ORDER FOR PROTECTION”.



VAIW: acronym for Violence Against Indian Women.

VICTIM: a person who has had power and control taken from them. The focus is on loss due to violence. Sometimes inappropriately used, it ignores the strengths, gifts, and other relationships a woman possesses.

VIOLENCE AGAINST WOMEN ACT (VAWA): key components of VAWA include:

- Creation of a national domestic violence hot line;
- Increased funding for domestic violence shelters;
- Increased federal penalties for sex offenders;
- Creation of federal penalties for interstate domestic violence;
- Restitution provisions for victims of these federal crimes;
- Encouragement of mandatory arrest policies for abusive partners.

One purpose of VAWA is to assist States, Indian Tribal governments and units of local government to develop and strengthen effective law enforcement and prosecution strategies to combat violent crimes against women and to develop and strengthen victim services in cases involving violent crimes against women.

VILLAGE PROTECTION SAFETY OFFICER (VPSO): Alaskan village law enforcement.

VIOLENCE: often seen as physical harm resulting in broken bones or actions leading to arrest. However, to paraphrase Gandhi, “An act of violence has been committed when one prevents a person from doing what they want, or causes them to do something against their will.” Violence moves beyond abuse instilling not just pain but intense fear. Violence impacts all levels of our existence: physical, emotional, spiritual, and mental. Violence takes power and control over our lives and bodies away from us.

VOCA: acronym for the Federally legislated Victims of Crime Act (1983).

WOMAN: reflects the concept that a female is not defined by one particular experience or relationship. It reflects a dynamic female human being that possesses physical, mental, emotional, and spiritual gifts. “Woman” acknowledges a powerful, whole human being that is female. Words like “client”, “lady”, “victim”, “patient”, and even “survivor” minimize or ignore the many aspects, gifts, experiences and relationships a woman has. These words emphasize an unequal relationship and negative experience. When inappropriate to refer to someone by their name, using their “relative name” (sister, mother, grandmother, etc), or the word “woman” reflects respect and honor.

