

CHAPTER 14

DOMESTIC VIOLENCE AND TRIBAL COURTS¹

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INTRODUCTION

In recent years there has been improvement in enforcement of domestic violence protection orders across tribal and state jurisdictions. However, for many judges contact with tribal courts or tribal court issued protection orders may be rare. This chapter is designed to provide general information about Native American communities and tribal courts located in Washington.

I. Native American Communities in Washington State

Native Americans in Washington State

There are twenty-nine (29) federally recognized Indian tribes located in Washington.² Each tribe is a sovereign entity with a governing body that is responsible for the administration of justice, promulgation of laws and law enforcement for the tribe. The twenty-nine tribal communities vary in geographic size, economic resources, customs and traditions, population, and natural resources.

Indian tribes are defined by 25 U.S.C. § 1301, as any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government. Powers of self-government include executive, legislative, and judicial functions.

In 2000, the U.S. Census Bureau counted over half of Native Americans and Alaska Natives as living in ten states. Washington State ranked seventh with a population of 93,300 Native Americans and Alaska Natives.³ In 2000, the U.S. Census Bureau reported 2,475,956 Native Americans and Alaska Natives residing in the United States.

Tribal Governments

Generally, modern tribal governments are structured in such a way that the voting membership of each tribe, known as the general council, elects a tribal council that then represents the interests of the general council. The tribal council elects from among its membership an executive committee, which usually consists of a chairperson, vice-chairperson, secretary and treasurer. The executive committee has the power to act on behalf of the tribal council in certain matters and possesses important appointive powers.⁴

An example of a tribe that has combined traditional and modern organizational practices in governing is the Yakima Nation located in Toppenish, Washington. The Yakima government is divided into three levels, each with its own functions. The tribal council establishes policy and preserves treaty rights. The administrative level supervises the administration and planning of the government. The operations level directs programs designed to meet the needs of the community. Finally, the general council oversees the entire government structure through regular meetings.⁵

Tribal Law

Tribal governments have the authority to adopt laws to govern activity within the jurisdiction of the tribe. This authority includes establishing legal structures and judicial forums for administration of justice. Tribes exercise personal jurisdiction over member and non-member Indians. Tribes may exercise subject matter jurisdiction over areas such as criminal, juvenile and civil actions.⁶

It is not uncommon for tribes to adopt legal codes from other tribes and jurisdictions. Some tribes hire legal professionals as code writers to assist in drafting codes that better suit the particular needs and circumstances of each tribal community. Each tribe may have different areas of law over which it exercises jurisdiction. However, most tribes have adopted codes for criminal and civil procedure, natural resources protection, juvenile delinquency and dependency actions, and domestic relations. Some tribes may allow for the use of federal law, state law, or common law when there are gaps in their own tribal codes. In complex cases, some tribal courts may allow parties to stipulate to the use of state or federal rules of evidence or civil procedure.

Usually, tribal criminal laws are similar to criminal laws adopted by the state, although there may be differences in the penalties due to the limitations placed on tribes by the Indian Civil Rights Act. In criminal matters tribes tend to place an emphasis on rehabilitation over punishment. Tribal court procedures tend to be streamlined to provide easy access to justice for pro se litigants. Finally, parties are encouraged to resolve civil disputes in a non-adversarial manner whenever possible.

The majority of tribes have constitutions, which establishes the basic framework of the tribal government. In some instances, the constitutions contain the provisions for membership in the tribe. Generally, the Indian Civil Rights Act provides civil rights, which is sometimes incorporated into tribal constitutions.⁷ The Confederated Tribes of the Colville Reservation located in Nespelem, Washington have their own civil rights code.

Tribal Courts

Twenty-five of the twenty-nine tribes have established tribal court systems.⁸ Tribal judges are generally appointed to serve a specific term, although some tribes elect tribal judges.⁹ Although most tribal judges are attorneys, some tribes allow for non-lawyers to serve as judges. There are tribal judges who speak both their tribal language and English. Not all tribes require tribal judges to be members of the tribe, although there is a preference to have tribal members or Native Americans from other tribes serve as judges.

Appeals from tribal trial courts are brought before each tribe's own appellate court. Some tribes have standing appellate courts, while others convene appellate courts as necessary. Appellate panels might be made up of appointed appellate judges, or tribal judges from other tribes, or in some cases tribes may appoint attorneys familiar with Indian law to serve as appellate judges.

For criminal matters, most tribes employ both prosecutors and public defenders. However, smaller court systems may have neither, because of insufficient funding. Legal representation may be provided by attorneys licensed in Washington, or persons familiar with the laws, customs and traditions of the tribe.

Tribal courts use court procedures similar to those found in state and federal courts. Tribal courts do have limitations on their authority over certain acts and persons based on United States Supreme Court decisions and by federal law. Tribal courts do handle a variety of cases ranging from civil infractions, domestic relations, natural resource violations, dependency and juvenile delinquency actions, criminal, and general civil litigation. There is not a separation between levels of trial courts as found in the state judicial system, such as the district and superior courts. However, some tribes have established separate juvenile and administrative courts.

Few tribes have their own jails or juvenile detention facilities. Therefore, many tribes contract to use local county jail facilities, or they contract with other tribes that have jail facilities.

II. Domestic Violence in Tribal Communities

Victims in Tribal Communities

For an overall presentation of domestic violence issues, the reader should see Chapter 2, *Domestic Violence: The What, Why and Who, as Relevant to Criminal and Civil Court Domestic Violence Cases*, located in this manual.

In December 2004, the U.S. Department of Justice, Bureau of Justice Statistics (BJS) completed a study of American Indians and Crime.¹⁰ Data was gathered from a wide variety of sources, including the Bureau of Justice Statistics, the Federal Bureau of Investigation (FBI), the Bureau of Prisons (BOP) and the U.S. Census Bureau. BJS also collected data from Native American crime victims on how they were affected by the victimization and about who victimized them. The study provides interesting statistical information about domestic violence in Native American communities nationwide. However, due to a lack of statistical reporting and gathering procedures for tribal justice systems, the survey has limited information on victims and batterers using tribal courts.

The BJS study concluded that between 1992 and 2001, the percentage of violent victimizations against American Indians by intimate/family members was 21 percent.¹¹ Violent victimizations by acquaintances were 37 percent and by strangers was 42 percent.¹² Violent crimes included in the study were rape/sexual assault, robbery, aggravated assault and simple assault.

The high poverty rates and high unemployment rates found within many Indian communities are often accompanied by high rates of substance abuse, which is a major factor in victim-related crimes. Indian victims reported alcohol use by 62 percent of offenders, compared with 42 percent for all races.¹³

Victims living in tribal communities face unique conditions in trying to obtain victim assistance. Generally tribal communities have existed in roughly the same geographical area for centuries. As a result, there is a familiarity created by this long-term proximity of families, which may have some benefits for victims of domestic violence because they can receive assistance from family members. But there is also a downside. Some families may be rendered dysfunctional due to generations of substance abuse, domestic violence and poverty. There may be strong cultural pressure not to betray family members who are often the perpetrators of violent crime.¹⁴

Native American victims may be reluctant to seek assistance from tribal victim service agencies because of a concern that their situation may become known to the community. Due to limited tribal government resources, there is often a lack of “safe houses” on reservations, as well as other victim services. Many victims do not have the financial resources to leave the reservation and re-establish a household in another community to leave a domestic violence situation.

Many Native American victims are reluctant to utilize non-Native sources of support and help.¹⁵ To help overcome the reluctance of Native American victims to seek assistance, some reservations have implemented accessible on-reservation assistance programs that have increased the reporting and cooperation of victims against violent crime.¹⁶ These programs provide victim assistance, as well as provide valuable cultural and statistical information about the Native American communities they serve.

Batterers in Tribal Communities

For the purposes of tribal enforcement of protection orders, there are two classifications of batterers found in Native American communities: Native Americans and non-Native Americans. Tribal courts have criminal jurisdiction over tribal members and other Native Americans.¹⁷ Therefore, tribal courts have the authority to issue and enforce civil and criminal protection orders against any Native American by means of arrest and prosecution for violation of protection orders.

Tribal enforcement of civil protection orders involving non-Indian respondents can present complicated jurisdictional issues. Tribal courts do not have criminal jurisdiction over non-Indians. Therefore, non-Indians may not be prosecuted and jailed by tribal authorities.¹⁸ If a tribal court were to issue a civil protection order against a non-Indian, enforcement by tribal authorities for violations through arrest and prosecution probably could not be accomplished. However, tribal law enforcement does have the authority to stop and detain non-Indians for state authorities.¹⁹

For more information concerning batterers or substance abuse related to domestic violence, the reader should see Chapter 2 and Appendix A of this book.

III. Enforcement of Protection Orders - Full Faith and Credit Laws

The following scenarios illustrate some of the difficulties that victims may encounter when trying to have protection orders enforced across tribal and state jurisdictions. The passage of federal and state full faith and credit laws have helped to alleviate some of the jurisdictional problems victims must overcome to find protection.

A Native American woman living within the boundaries of a local Indian reservation is assaulted by her non-Native American boyfriend. When she seeks a protection order in the tribal court, she is told that she must travel to the state court to seek a protection order. Once she has obtained the state protection order, she is advised to register the protection order with the tribal police. The tribal police inform her that since the offender is a non-Native American, the tribal police can only detain him if he violates the order. She will have to call the sheriff's department to have him arrested and prosecuted if he violates the protection order.

A tribal court issues a protection order to a Native American victim against her Native American ex-boyfriend. She travels off the reservation to a local shopping center. Upon returning to her car she notices a note placed under her windshield wiper. When she looks around to see who might have left the note, she sees her ex-boyfriend sitting in a car watching her. She immediately calls the local police. A city police officer arrives, reviews the protection order and informs the victim that the city police department does not enforce tribal protection orders due to liability reasons.

A non-Native American woman living on a reservation obtains a protection order in the state court against her non-Native American ex-husband. When her ex-husband arrives at her home intoxicated and demanding entry, she calls 911. The dispatcher notifies a sheriff's deputy to respond who is twenty minutes from the scene. The tribal police are only five minutes away.

These hypothetical scenarios illustrate some of the jurisdictional problems associated with enforcement of protection orders between tribes and the state of Washington. These issues should be of mutual concern to both tribal and state officials. Jurisdictional issues on reservations are complex. Determining who has jurisdiction often depends on location of the incident, type of crime, whether the protection order is civil or criminal, and whether the offender is Native American or non-Native American. The jurisdictional maze that is found on many reservations often prevents effective law enforcement. In emergency situations, there is little time to work through complex jurisdictional issues. Further, as a result of a lack of effective communication, procedures, and agreements between tribal and local governments, there are instances when authorities having jurisdiction may not be the nearest law enforcement agency, while closer law enforcement agencies may not be called to respond because they lack jurisdiction. At present, many tribal judges recommend that tribal members also obtain a protection order in state court, to avoid the possibility that the tribal protection order may not be enforced outside the boundaries of the reservation, especially if the batterer is a non-Indian.

Violence Against Women Act

The Violence Against Women Act (VAWA) has encouraged cooperation between tribal and state law enforcement agencies and courts to improve criminal justice and community responses to domestic violence, dating violence, sexual assault and stalking. VAWA was reauthorized and expanded in 2005.

VAWA, 18 U.S.C. 2265, directs that states, U.S. territories, and Indian tribes enforce valid civil and criminal protection orders issued by sister states, territories, and tribes as though they had been issued by the non-issuing, enforcing state or tribal court. VAWA does not require prior registration or pre-certification of an order of protection in an enforcing state in order to receive full faith and credit. The only requirement for interstate or inter-jurisdictional enforcement of a protection order is that the foreign order be valid as defined by VAWA.²⁰

The purpose and rationale is simple: Women who receive protection from any court, be it tribal or state, ought to be entitled to protection throughout the United States and Indian country.²¹ Whether a victim of domestic violence is crossing state or reservation lines for business, pleasure, or fleeing from her batterer, she is entitled to the protections afforded by the original state or tribal protective order.²²

VAWA did not provide for enforcement procedures. Establishing procedures for enforcement of foreign orders of protection has been left to the states and tribes. Since Section 2265 was enacted, a majority of states have addressed the issue of enforcement of out-of-state protection orders by amending their state domestic violence codes or statutes.²³ Washington adopted such a statute in 1999.

Foreign Protection Order Full Faith and Credit Act—Washington State

Washington's Foreign Protection Order Full Faith and Credit Act removes barriers faced by persons entitled to protection under foreign protection orders.²⁴ The act also provides for criminal prosecution of violators of foreign protection orders.

The act provides that protection orders issued by tribal courts are to be given full faith and credit by Washington courts. The act defines foreign protection orders as injunctions or other orders related to domestic or family violence, harassment, sexual abuse, or stalking, for the purpose of preventing violent or threatening acts or harassment against another person issued by a court of another state, territory, or possession of the United States, Puerto Rico, or the District of Columbia, or any United States military tribunal, or a tribal court, in a civil or criminal action.

To be enforced, a foreign protection order must be valid. The act prescribes that a foreign order is valid if it meets the following criteria:²⁵

- If the issuing court had jurisdiction over the parties and subject matter under the law of the state, territory, possession, tribe, or United States military tribunal.
- There is a presumption in favor of validity where an order appears authentic on its face.
- A person under restraint must be given reasonable notice and the opportunity to be heard before the order of the foreign state, territory, possession, tribe or United States military tribunal was issued; provided, in the case of ex parte orders, notice and opportunity to be heard was given as soon as possible after the order was issued, consistent with due process.

[RCW 26.52.050](#) provides for peace officer immunity. “A peace officer or a peace officer's legal advisor may not be held criminally or civilly liable for making an arrest under this chapter if the peace officer or the peace officer's legal advisor acted in good faith and without malice.”

[RCW 26.52.030](#) provides that out-of-state courts may send a facsimile or electronic transmission to the clerk of the court of Washington as long as it contains a facsimile or digital signature by any person authorized to make such transmission. Because some tribal courts are located at great distances from county superior courts, procedures for registration of foreign protection orders should include a provision for filing of a faxed copy or e-mail of the original protection order from tribal courts. These provisions will prevent delays due to transportation problems or inclement weather.

Washington’s [Civil Rule 82.5](#)

In 1990 the Washington State Forum to Seek Solutions to Jurisdictional Conflicts Between Tribal and State Courts recommended the adoption of [Civil Rule 82.5](#). Retired Chief Justice Vernon R. Pearson, serving as chairperson of the Forum, submitted the proposed rule.²⁶ In 1995 the Washington Supreme Court adopted the rule, with minor modifications, which provides for full faith and credit for tribal court orders and judgments.

[Rule 82.5](#) provides that superior courts shall recognize, implement and enforce the orders, judgments, and decrees of Indian tribal courts in matters in which either the exclusive or concurrent jurisdiction has been granted or reserved to an Indian tribal court of a federally recognized tribe under the laws of the United States, unless the superior court finds the tribal court that rendered the order, judgment, or decree: (1) lacked jurisdiction over a party or the subject matter; (2) denied due process as provided by the Indian Civil Rights Act of 1968; or (3) does not reciprocally provide for recognition and implementation of orders, judgments, and decrees of the superior courts of the state of Washington.

IV. Tribal Domestic Violence Laws and Tribal Protection Orders

Tribal Domestic Violence Laws

Not all Indian tribes in Washington have adopted specific domestic violence codes. There is no uniform tribal domestic code; therefore tribes that have adopted domestic violence codes may have differing provisions and relief granted under their codes. Some tribes have specific domestic violence codes, while other tribes rely on general criminal or civil statutes to address the issue. The Lummi Nation, located in Bellingham, has an extensive domestic violence code, which was revised in 2005.

The Lummi Nation domestic violence code requires that tribal law enforcement provide for the safety of victims and family members by arresting the primary physical aggressor and by confiscating any weapons that may have been used to perpetrate domestic violence. The code provides that the tribal police are to assist the victim to obtain transportation to a shelter or medical facility. Finally, tribal police are to provide the victim with notice of the rights of the victim and remedies and services available. Examples of similar provisions for advising victims of their rights and providing transportation can be found in the Spokane Tribal Code, Puyallup Tribal Code, and Quinault Tribal Code.

Tribal Court Protection Orders

Procedures for issuing civil protection orders for domestic violence vary among tribes. Generally, the victim filing a petition with the court starts an action for a tribal court protection order. The petition should be supported by a signed statement or affidavit by the petitioner. If the petitioner requests an immediate ex parte hearing before the court, the petitioner will be required to provide sworn testimony as to the specific facts and circumstances of the alleged domestic violence incident and the necessity for immediate issuance of a protection order. If the judge determines that an emergency does exist, a temporary order of protection may be issued that same day.

A hearing with the respondent on a temporary ex parte order usually takes place within 7-10 days. The temporary ex parte order usually expires on the day set for the hearing. In some tribal jurisdictions a hearing on an ex parte order will be scheduled within three days if the petitioner requests temporary custody of children, or has requested possession of a shared residence or vehicle.

The tribal police usually accomplish service on a respondent living on the reservation. For respondents living off the reservation, the petitioner will likely use either the sheriff's department or a private process server.

After the respondent has been given notice and the opportunity to be heard, the court may issue an order of protection for an extended period of time. In some jurisdictions the order may be valid for one year or more. The court may review, rescind, or modify the order.

Common relief provisions include:

- Restraining the perpetrator from committing further acts of domestic violence.
- Excluding the respondent from the residence of the petitioner.
- Making temporary custody and visitation provisions or restraining the respondent from interfering with child custody or removal from the jurisdiction of the court.
- Ordering the respondent to stay away from the victim's school or place of employment.
- Ordering respondent to receive substance abuse evaluations, attend treatment, seek mental health assessment, attend counseling, anger management, or other programs to include parenting classes if needed.²⁷
- Requiring the respondent to sign a release of information enabling the Court to monitor the respondent's compliance with treatment or counseling as ordered.²⁸

V. Criminal Jurisdiction in Indian Country

Domestic violence may involve major crimes and less serious crimes to persons or property. This section discusses the authority by which tribal courts can enforce tribal criminal laws. Tribal courts are limited over the types of crimes and persons over which they can exercise criminal jurisdiction. There are also limits on sentences that can be imposed upon Native Americans convicted of crimes taking place within reservation boundaries.

Indian Civil Rights Act of 1968²⁹

In 1968 Congress passed the [Indian Civil Rights Act \(ICRA\)](#). The ICRA provided for civil rights for all persons who are subject to the jurisdiction of tribal governments. The ICRA also placed limits on the maximum penalties that tribal courts could impose for each criminal offense. The maximum penalty for any one offense is limited to one (1) year in jail, and/or a fine of \$5000. See Attachment V for text of ICRA.

Major Crimes Act³⁰

The Major Crimes Act provides that any Indian committing a felony against the person or property of another Indian or other person, namely, murder, manslaughter, kidnapping, maiming, a felony under Chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in Section 1365 of Title 18), assault against an individual who has not attained the age of 16 years, arson, burglary, robbery, and a felony under Section 661 of Title 18 within Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States. These crimes may be investigated by the FBI and referred to the U.S. Attorney's Office for prosecution in federal district court. Tribes may prosecute cases when the U.S. Attorney declines to prosecute, with the penalty limitations imposed by the ICRA.

Non-Native Americans

Tribes do not have general criminal jurisdiction over non-Native Americans.³¹ However, tribal police have been held to have authority to stop and detain non-Native American law violators within the boundaries of reservations until state authorities arrive.³²

Tribal Exclusion

Tribes have a unique remedy they may exercise against non-members of the tribe known as exclusion. This remedy, often guaranteed by treaty, permits tribes to exclude unwanted persons from their reservations. The power of exclusion might be viewed as quasi-criminal, and can be exercised against non-Indians.³³ Tribes do not have authority to exclude from their reservations federal officials engaged in carrying out their duties. Non-members may be excluded from within the exterior boundaries of reservations for violating tribal law or for felony convictions in state or federal court. However, owners of non-trust land may not be excluded from the land they own. Persons to be excluded are given notice and the opportunity for a hearing before the tribal court. The person to be excluded may appeal an unfavorable decision to the Tribal Court of Appeals. Those persons excluded who refuse to obey the order may be referred to the United States Attorney.

VI. Child Custody and Visitation Issues

Some tribal domestic violence codes provide for temporary child custody arrangements to be made through protection orders. Child custody and visitation issues make for complex problems when issuing and enforcing domestic violence protection orders when there are conflicting orders issued by two jurisdictions. When child custody or visitation is an issue in a protection order request, judges should question the parties about the existence of a current custody or visitation order from another court. At minimum judges should note the existence of the previously issued custody or visitation order in the protection order.

Washington's Foreign Protection Order Full Faith and Credit Act provides that, "any disputes regarding provisions in foreign protection orders dealing with custody of children, residential placement of children, or visitation with children shall be resolved judicially. The proper venue and jurisdiction for such judicial proceedings shall be determined in accordance with [RCW 26.27](#) and in accordance with the parental kidnapping prevention act, [28 U.S.C.A. 1738A](#)."³⁴

[RCW 26.52.080](#) further provides that law enforcement officers shall not remove a child from his or her current placement unless:

- There is a writ of habeas corpus to produce the child issued by a superior court of Washington State, or
- There is probable cause to believe the child is abused or neglected and the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to [RCW 13.34.050](#).

VII. State and Tribal Courts Working Together

The Foreign Protection Order Full Faith and Credit Act and the Violence Against Women Act are designed to provide legal mechanisms for the cross-jurisdiction enforcement of protection orders between tribal and state courts, which will ultimately assist victims of domestic violence to navigate through a jurisdictional maze to obtain needed protection to prevent further acts of domestic violence.

In recent years there have been efforts made to improve enforcement of protection orders across jurisdictions. Some tribal courts have made efforts to adopt uniform domestic violence orders and cover sheets similar to those used by state courts in order to assist law enforcement recognize protection orders issued by other jurisdictions.

The 1989 Washington Centennial Accord sought to build confidence in the viability of true government-to-government relations with tribes and to serve as

the foundation for further agreements. One purpose of the Accord was to improve the delivery of services to all individuals represented by all parties by improving communication at the agency level.

In 1990 the Washington State Forum to Seek Solutions to Jurisdictional Conflicts between tribal and state courts issued its final report. The report recommended that tribal and state agencies should, to the extent permitted by resources and subject matter, work to create agreements resolving and reducing jurisdictional conflicts.³⁵ The report suggested that resolution of jurisdictional conflicts between state and tribal courts could be accomplished by interpersonal contacts between judges.

In August 2002, the Conference of Chief Justices adopted Resolution 27, “To Continue the Improved Operating Relations Among Tribal, State and Federal Judicial Systems.” The Conference endorsed the principle that tribal, state and federal courts should continue cooperative efforts to enhance relations and resolve jurisdictional issues. They also endorsed the principle that tribal, state and federal authorities should take steps to increase the cross-recognition of judgments, final orders, laws and public acts of the other three jurisdictions. The Conference gave support to intergovernmental agreements that provide for cross-utilization of facilities, programs, the exchange of justice system records information and extradition to and from Indian country.

BIBLIOGRAPHY

Articles

- Cornell, Stephen and Jonathan B. Taylor, "Sovereignty, Devolution, and the Future of Tribal-State Relations," Harvard Project on American Indian Development, June, 2000.
- Jones, B.J., "Role of Indian Tribal Courts In The Justice System," Center on Child Abuse and Neglect, March, 2000.
- Kamkoff, Daniel, "Crime Victim Services in Indian Country," Lummi Victims of Crime Program, 1997.
- Perry, Steven W., "A BJS Statistical Profile, 1992-2002, American Indians and Crime," U.S. Department of Justice Bureau of Justice Statistics, 2004.
- Pommersheim, Frank, "Tribal-State Relations: Hope for the Future?" *South Dakota Law Review*, Vol. 36, 1991.
- "Washington State Forum to Seek Solutions to Jurisdictional Conflicts Between Tribal and State Courts: Final Report," The Forum was established by the Conference of Chief Justices' National Coordinating Council, 1990.
- Zeya, Seema, "Progress Report on Full Faith and Credit Enabling Legislation and Implementation Procedures," Battered Women's Justice Project, Harrisburg, PA, Internet Site at, <http://www.vaw.umn.edu/documents/ffc/ffcprogfin/ffcprogfin.html>.

Books

- Canby, William C., Jr., *American Indian Law In a Nut Shell*, Fourth Ed., West Group, St. Paul, Minn., 2004.
- Cohen, Felix S., *Handbook of Federal Indian Law*, William S. Hein Co., Buffalo, NY, 1988.
- Deloria, Vine, Jr., and Clifford M. Lytle, *American Indians, American Justice*, University of Texas Press, Austin, Norman and London, 1983, Sixth Paperback Printing, 1992.
- Johnson, Byron R. and Neil S. Websdale (eds.), *Full Faith and Credit: Passport to Safety*, National Council of Juvenile and Family Court Judges, Reno, Nevada, 1997.
- O'Brien, Sharon, *American Indian Tribal Governments*, University of Oklahoma Press, Norman and London, 1989).
- Pevar, Stephen L., *The Rights of Indians and Tribes*, Second Ed., Carbondale and Edwardsville Southern Illinois University Press, 1992.

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ATTACHMENT I

Federally Recognized Indian Tribes Within Washington State

| <u>Tribe</u> | <u>Location</u> | <u>Phone #s</u> |
|-------------------------------------------------|-----------------|-----------------|
| Chehalis Confederated Tribes | Oakville | (360) 273-5911 |
| Confederated Tribes of the Colville Reservation | Nespelem | (509) 634-2500 |
| Cowlitz Indian Tribe | Longview | (360) 577-8140 |
| Hoh Tribe | Forks | (360) 374-4305 |
| Jamestown S'Klallam | Sequim | (360) 683-1109 |
| Kalispel Tribe | Usk | (509) 445-1664 |
| Lower Elwha Klallam Tribe | Port Angeles | (360) 452-8471 |
| Lummi Nation | Bellingham | (360) 384-2305 |
| Makah Tribe | Neah Bay | (360) 645-3302 |
| Muckleshoot Tribe | Auburn | (253) 939-3311 |
| Nisqually Tribe | Olympia | (360) 456-5221 |
| Nooksack Tribe | Deming | (360) 592-4158 |
| Port Gamble S'Klallam Tribe | Kingston | (360) 297-2646 |
| Puyallup Tribe | Tacoma | (253) 573-7826 |
| Quileute Tribe | La Push | (360) 374-6294 |
| Quinault Nation | Taholah | (360) 276-8211 |
| Samish Indian Nation | Anacortes | (360) 293-6404 |
| Sauk-Suiattle Tribe | Darrington | (360) 436-0131 |
| Shoalwater Bay Tribe | Tokeland | (360) 267-6766 |
| Skokomish Tribe | Skokomish | (360) 426-4740 |
| Snoqualmie Tribe | Carnation | (425) 333-6551 |
| Spokane Tribe | Wellpinit | (509) 258-7717 |
| Squaxin Island Tribe | Shelton | (360) 432-3828 |
| Stillaquamish Tribe | Arlington | (360) 652-7362 |
| Suquamish Tribe | Suquamish | (360) 394-8521 |
| Swinomish | LaConner | (360) 466-7255 |
| Tulalip Tribes | Tulalip | (360) 651-4049 |
| Upper Skagit Tribe | Sedro Woolley | (360) 854-7080 |
| Yakima Nation | Toppenish | (509) 865-5121 |

ATTACHMENT II

Violence Against Women Act (VAWA), 18 U.S.C.A. §2265 Crimes and Criminal Procedure

Full Faith and Credit Given to Protection Orders

- (a) Full faith and credit—Any protection order issued that is consistent with subsection (b) of this section by the court of one state or Indian tribe (the issuing state or Indian tribe) shall be accorded full faith and credit by the court of another state or Indian tribe (the enforcing state or Indian tribe) and enforced as if it were the order of the enforcing state or tribe.

- (b) Protection order—A protection order issued by a state or tribal court is consistent with this subsection if:
 - (1) Such court has jurisdiction over the parties and matter under the law of such state or Indian tribe; and
 - (2) Reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of *ex parte* orders, notice and opportunity to be heard must be provided within the time required by state or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

- (c) Cross or counter petition—A protection order issued by a state or tribal court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if:
 - (1) No cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or
 - (2) A cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

ATTACHMENT III

Selected Sections of Washington's Foreign Protection Order Full Faith and Credit Act

Revised Code of Washington, 2005 Supplement

Chapter 26.52

Foreign Protection Order Full Faith and Credit Act

26.52.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Domestic or family violence" includes, but is not limited to, conduct when committed by one family member against another that is classified in the jurisdiction where the conduct occurred as a domestic violence crime or a crime committed in another jurisdiction that under the laws of this state would be classified as domestic violence under [RCW 10.99.020](#).

(2) "Family or household members" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(3) "Foreign protection order" means an injunction or other order related to domestic or family violence, harassment, sexual abuse, or stalking, for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to another person issued by a court of another state, territory, or possession of the United States, the Commonwealth of Puerto Rico, or the District of Columbia, or any United States military tribunal, or a tribal court, in a civil or criminal action.

26.52.020 Foreign Protection Orders – Validity. A foreign protection order is valid if the issuing court had jurisdiction over the parties and matter under the law of the state, territory, possession, tribe, or United States military tribunal. There is a presumption in favor of validity where an order appears authentic on its face.

A person under restraint must be given reasonable notice and the opportunity to be heard before the order of the foreign state, territory, possession, tribe, or United States military tribunal was issued, provided, in the case of ex parte orders, notice and

opportunity to be heard was given as soon as possible after the order was issued, consistent with due process.

26.52.030 Foreign protection orders – Filing – Assistance. (1) A person entitled to protection who has a valid foreign protection order may file that order by presenting a certified, authenticated, or exemplified copy of the foreign protection order to a clerk of the court of a Washington court in which the person entitled to protection resides or to a clerk of the court of a Washington court where the person entitled to protection believes enforcement may be necessary. Any out-of-state department, agency, or court responsible for maintaining protection order records, may by facsimile or electronic transmission send a reproduction of the foreign protection order to the clerk of the court of Washington as long as it contains a facsimile or digital signature by any person authorized to make such transmission.

26.52.040 Filed foreign protection orders – Transmittal of to law enforcement agency – Entry into law enforcement information system. (1) The clerk of the court shall forward a copy of a foreign protection order that is filed under this chapter on or before the next judicial day to the county sheriff along with the completed information form. The clerk may forward the foreign protection order to the county sheriff by facsimile or electronic transmission.

Upon receipt of a filed foreign protection order, the county sheriff shall immediately enter the foreign protection order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The foreign protection order must remain in the computer for the period stated in the order. The county sheriff shall only expunge from the computer-based criminal intelligence information system foreign protection orders that are expired, vacated, or superseded. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the foreign protection order. The foreign protection order is fully enforceable in any county in the state.

(2) The information entered into the computer-based criminal intelligence information system must include, if available, notice to law enforcement whether the foreign protection order was served and the method of service.

RCW 26.52.070 Violation of foreign orders – Penalties. (1) Whenever a foreign protection order is granted to a person entitled to protection and the person under restraint knows of the foreign protection order, a violation of a provision prohibiting the person under restraint from contacting or communicating with another person, or of a provision excluding the person under restraint from a residence, workplace, school, or day care, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime, is punishable under [RCW 26.50.110](#).

(2) A peace officer shall arrest without a warrant and take into custody a person when the peace officer has probable cause to believe that a foreign protection order has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order that prohibits the person under restraint from contacting or communicating with another person, or a provision that excludes the person under restraint from a residence, workplace, school, or day care, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

ATTACHMENT IV

Washington Court Rules for Superior Court, Civil Rule [\(CR\) 82.5](#)—Tribal Court Jurisdiction

(a) Indian Tribal Court; Exclusive Jurisdiction. Where an action is brought in the superior court of any county of this state, and where, under the Laws of the United States, exclusive jurisdiction over the matter in controversy has been granted or reserved to an Indian tribal court of a federally recognized Indian tribe, the superior court shall, upon motion of a party or upon its own motion, dismiss such action pursuant to [CR 12\(b\)\(1\)](#), unless transfer is required under federal law.

(b) Indian Tribal Court; Concurrent Jurisdiction. Where an action is brought in the superior court of any county of this state, and where, under the Laws of the United States, concurrent jurisdiction over the matter in controversy has been granted or reserved to an Indian tribal court of a federally recognized Indian tribe, the superior court may, if the interests of justice require, cause such action to be transferred to the appropriate Indian tribal court. In making such determination, the superior court shall consider, among other things, the nature of the action, the interests and identities of the parties, the convenience of the parties and witnesses, whether state or tribal law will apply to the matter in controversy, and the remedy available in such Indian tribal court.

(c) Enforcement of Indian Tribal Court Orders, Judgments or Decrees. The superior courts of the State of Washington shall recognize, implement and enforce the orders, judgments and decrees of Indian tribal courts in matters in which either the exclusive or concurrent jurisdiction has been granted or reserved to an Indian tribal court of a federally recognized tribe under the Laws of the United States, unless the superior court finds the tribal court that rendered the order, judgment or decree (1) lacked jurisdiction over a party or the subject matter, (2) denied due process as provided by the Indian Civil Rights Act of 1968, or (3) does not reciprocally provide for recognition and implementation of orders, judgments and decrees of the superior courts of the State of Washington.
[Adopted effective September 1, 1995.]

ATTACHMENT V

Indian Civil Rights Act of 1968³⁶

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

- (1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
- (2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- (3) subject any person for the same offense to be twice put in jeopardy;
- (4) compel any person in any criminal case to be a witness against himself;
- (5) take any private property for a public use without just compensation;
- (6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;
- (7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and a fine of \$5,000, or both;
- (8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
- (9) pass any bill of attainder or ex post facto law; or
- (10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

¹ This Chapter was updated in 2005 by Randy Doucet, Chief Judge of the Lummi Nation Tribal Court. The original chapter written in 2001 was completed with input from a Reviewing Committee consisting of former Chief Judge Mary Wynne, Colville Federated Tribes; Judge Julian Pinkham, Children’s Court of the Yakima Nation; Commissioner Katherine Eldemar, Whatcom County Superior Court; Judge Susan Owens, Lower Elwha Tribal Court and Clallam County District Court; Dan Kamkoff, Director of the Lummi Victims of Crime; Dr. Anne Ganley, Domestic Violence Expert; Gloria Hemmen, Office of the Administrator for the Courts; and Margaret Fisher, Project Director, Office of the Administrator for the Courts. The production of this chapter was made possible with funding from the Rural Domestic Violence and Child Victimization Enforcement Grant Program of the U.S. Department of Justice, Office of Justice Programs.

² See Attachment I of this chapter for a list of federally recognized Indian tribes in Washington State.

³ Stella U. Ogunwole, *The American Indian and Alaska Native Population: 2000* (Washington, DC: U.S. Census Bureau, February 2002) (Census 2000 Brief).

⁴ Sharon O’Brien, *American Indian Tribal Governments* (University of Oklahoma Press, 1989), 190.

⁵ *Id.*

⁶ *Id.*

⁷ See Attachment V of this chapter for the text of the Indian Civil Rights Act of 1968.

⁸ Washington State Tribal Directory, Governor’s Office of Indian Affairs, July 2004.

⁹ The Lummi Nation Code of Laws, 1.03.020, provides for a six (6) year appointment for each judge by the Tribal Council.

¹⁰ Steven W. Perry, *American Indians and Crime: A BJS Statistical Profile, 1992-2002* (U.S. Department of Justice, Bureau of Justice Statistics, December 2004), NCJ 203097 [hereinafter BJS Study].

¹¹ *Id.* at 8.

¹² *Id.*

¹³ *Id.* at 10.

¹⁴ *Id.*

¹⁵ Daniel Kamkoff, *Crime Victim Services in Indian Country* (Lummi Victims of Crime Program, 1997).

¹⁶ *Id.*

¹⁷ 25 U.S.C. 1301.

¹⁸ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

¹⁹ *State v. Schmuck*, 121 Wn.2d 373, 850 P.2d 1332, *cert. denied*, 510 U.S. 931 (1993).

²⁰ 18 U.S.C.A. § 2265.

²¹ Byron R. Johnson and Neil S. Websdale, eds., *Full Faith and Credit: Passport to Safety* (Reno, NV: National Council of Juvenile and Family Court Judges, 1997), 88.

²² *Id.*

²³ Seema Zeya, *Progress Report on Full Faith and Credit Enabling Legislation and Implementation Procedures* (Battered Women’s Justice Project).

²⁴ The act amended [RCW 26.10.220](#), [26.26.138](#), [26.50.010](#), and [10.31.100](#), adding a new chapter to [RCW Title 26](#).

²⁵ [RCW 26.52.020](#).

²⁶ *Washington State Forum to Seek Solutions to Jurisdictional Conflicts Between Tribal and State Courts: Final Report* (Conference of Chief Justices National Coordinating Council, 1990), 2 [hereinafter CCJNCC Final Report].

²⁷ Puyallup Tribal Code, 7.04.160 (7).

²⁸ Quileute Domestic Violence Prevention Ordinance, 1.6(d).

²⁹ 25 U.S.C.A. § 1301-03.

³⁰ 18 U.S.C.A. § 1153.

³¹ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

³² *State v. Schmuck*, *supra* note 19.

³³ William C. Canby, Jr., *American Indian Law in a Nut Shell*, 3rd ed. (St. Paul, Minn.: West Group, 1998), 165.

³⁴ [RCW 26.52.080](#)

³⁵ CCJNCC Final Report, *supra* note 26, at 6.

³⁶ 25 U.S.C.A. § 1302 (Constitutional Rights).