

Victim's Rights

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Disclaimer

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LEARNING OBJECTIVES

- Participants will receive and discuss information on victim's rights in Indian country.
- Participants will understand why and how victim's rights are beneficial to victims and their families.
- Participants will discuss navigating victim's rights in multiple jurisdictions.
- Participants will understand the importance of defining a victim for purpose of activating victim's rights.
- Participants will discuss the importance of having an enforcement clause included in the victim's rights.
- Participants will be provided useful resources for service needs of victims of crime.



There Are 575 Federally Recognized Tribes In The United States

- This information is being presented in general terms.
- The information will need to be adjusted based on jurisdictional and the cultural differences of each tribe.



Knowledge Check



- In What Way Can Crime Impact a Victim's Life?
- How Might Victim's Rights Be Beneficial?

Please place thoughts in chat

How are Victim's Rights Beneficial?

- Forces the justice system to provide some protections for the victim to foster safety, prevention and support cooperation with prosecutions.
- Provides an opportunity for participation in the criminal justice process (victim centered).
- Sends a message to the community that victim's voice matters.



Tips For Navigating Multiple Jurisdictions

- Review applicable state, federal and/or tribal statutes regarding victim's rights
 - *Note that tribal codes may vary from tribe to tribe*
- Take note of the enforcement provisions that are available if the victim is being denied a right
- Attorneys be sure to discuss enforcement options with the victim prior to taking legal action
- Advocates adjust safety plan with victim during this time.
- Attorneys should consider entering an appearance on behalf of the victim
- Attorneys should prepare to make motions to the court or request writs of mandamus to aggressively assert victim's rights

For Tribes That Have Implemented Special Tribal Criminal Jurisdiction over non-Indians

Tribes that meet the due process requirements can criminally prosecute non-Indians who commit one of the 9 covered crimes in Indian country:

- Assault of Tribal Justice Personnel (does not require an Indian victim)
- Child Violence (requires an Indian victim)
- Dating Violence (requires an Indian victim)
- Domestic Violence (requires an Indian victim)
- Obstruction of Justice (does not require an Indian victim)
- Sex Trafficking (requires an Indian victim)
- Sexual Violence (requires an Indian victim)
- Stalking (requires an Indian victim)
- Violation of a Protection Order (requires an Indian victim)

Does Special Tribal Criminal Jurisdiction 25 USC 1304 Affect Victim's Rights?

- Special Tribal Criminal Jurisdiction should not affect the applicable tribal victim's rights codes. However, if a state or federal court is also prosecuting note that each jurisdiction may have different victim's rights. For example, the victim may have one set of rights applicable in state court and another set of rights applicable in tribal court. This can create confusion and safety concerns.
- Prosecutors and victim advocates should review all applicable victim's rights.
- Prosecutors and victim advocates should advocate for all protection orders or criminal no-contact orders to meet the federal full faith and credit mandate found at 19 USC 2265. (order clearly states the tribal court has subject matter jurisdiction, personal jurisdiction and the defendant has been provided notice and an opportunity to be heard on the matter).

Knowledge Check



How might a Tribe's customs and traditions be utilized when working with crime victims?

Please place thoughts in chat

Being Culturally Sensitive and Aware

- Understand historic and individual trauma experienced in their past
- Understand the reluctance and trust issues victims may face when sharing sensitive information
- Incorporate traditional practices of visiting as relatives
- Understand everyone responds to trauma in different ways
- Utilize trauma informed practices to empower and validate the victim
- Practice active listening skills and check for understanding



Who Is a Victim of Crime and What Crimes Activate Victim's Rights?

- Will be defined by tribal statute.
- Could be a category of victims (elders, children, disabled, domestic violence).
- Could include surviving family members of a homicide victim.
- Could require victim to report to law enforcement.
- Could require criminal action or police report to be filed in court.
- Could be victims of certain crimes to activate victim status (felonies, violent crimes, sexual assault, domestic assaults).



A few federal definitions of a “victim”

18 USC 3771(e): person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime.

34 USC 20141(e): person directly and proximately harmed as a result of the commission of a Federal offense.

Both allow for others to stand in shoes of victims who are minors, incapacitated, incompetent or deceased.



Informing a Crime Victim of These Rights

- Gather relevant tribal statutes
- Discuss available rights with the victim
- Be aware of trauma effect on memory and repeat information to ensure rights are understood
- Review and discuss applicable victim's rights and safety plan
- Have victim's rights clearly posted on program materials such as brochures, putting posters in the workspace and on a relevant website.



Potential Legal Frameworks for Notice of Victim's Rights

- Legal representation to assert victim's rights
- Legal duty to inform
- Triggering offenses
- Definition of victim
- Timing of the notice
- Statutory scope of rights
- Victim autonomy
- Trauma informed legal practice
- Safety focused



General Core Victim's Rights

1. Right to be treated with fairness, dignity, sensitivity and respect.
2. Right to attend and be present at criminal justice proceedings.
3. Right to be heard in the criminal justice process that includes conferring with prosecutor, submitting a victim impact statement at sentencing, parole and other similar proceedings.
4. Right to be informed of proceedings and events in the criminal system (release or escape of offender, legal rights/remedies, access to records available benefits and so on).



General Core Victim's Rights

5. Right to protection from intimidation and harassment.
6. Right to restitution from the offender.
7. Right to privacy.
8. Right to apply for crime victim compensation.
9. Right to the expeditious return of personal property seized as evidence whenever possible.
10. Right to a speedy trial and other proceedings free from unreasonable delay.
11. Right to enforcement of victim's rights.

Victim's Rights and Restitution Act 34 USC 20141 (federal)

- Right to be reasonably protected from the accused
- Right to timely notice of court proceedings involving the crime or of any release or escape of the accused
- Right not to be excluded from public court proceedings unless court, upon clear and convincing evidence determines testimony by the victim would be materially altered if the victim heard the testimony
- Right to be heard by the court involving release, plea, sentencing or any parole hearing
- Right to confer with the attorney for the Government in the case
- Right to proceedings free from unreasonable delay
- Right to be treated with fairness and with respect for the victim's dignity and privacy



Victim's Rights and Restitution Act 34 USC 20141 (federal)

- The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement
- The right to be informed of these rights and the services available, including contact information for the Victims' Rights Ombudsman.
- Pamphlet for more information and Assistance for Federal Crime Victims and Witnesses see [Information and Assistance for VW \(1-2012\)](#).

Crime Victim's Rights Act 18 USC 3771 (federal)

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- Right to notice of any court hearing involving the crime or release or escape of the accused
- Right not to be excluded from court proceeding unless court determines testimony by the victim will be materially altered if the victim heard other testimony at that proceeding
- Right to be heard at any court proceeding involving release, plea, sentencing or any parole hearing
- Right to confer with attorney for the Government in the case
- Right to full and timely restitution as provided by law
- Right to unreasonable delays

Crime Victim's Rights Act 18 USC 3771 (federal)

- Right to be treated with fairness and with respect for the victim's dignity and privacy
- Right to be informed in timely manner of any plea bargain or deferred prosecution agreement
- Right to be informed of these rights and the services described in Victim's Rights and Restitution Act of 1990 (42 USC 10607(c)).

Enforcement Issues and Victim's Rights

- Throughout court proceedings.
- Standing issues (prosecutor may bring court action or statute gives victim standing to bring court action).
- Some statutes allow victims to seek special writs from court to force agencies to comply with the victim rights statutes.
- Some statutes allow designated entities to receive, investigate and attempt to solve victim rights violations.
- Many statutes indicate that a violation of the victim rights does not give rise to a civil cause of action against any agency.
- Many statutes indicate that a violation of victim rights cannot be raised by defendant as ground for appeal.
- Without an enforcement mechanism, victim's rights may just be words on paper.



Knowledge Check: In the tribal community you serve



- What is the process for victims to report crimes and what protections are in place for them?
- Are victims reporting crimes? If not, what are the challenges to reporting?
- How can we encourage more reporting?

Please place thoughts in chat

Knowledge Check



- Kara is an Indian victim of crime and criminal charges have just been filed in tribal court against her boyfriend for sexually assaulting Kara in Indian country. Kara is meeting with her tribal victim advocate. Kara explains that she doesn't want to be a part of a trial and she does not want to know about victim's rights.
- Kara has all the core victim's rights listed above? What should the service providers do?

Please place thoughts in chat

Knowledge Check



- Kara is now two months past the actual sexual assault and is meeting with her tribal victim advocate. Kara explains that she does now want to assert her victim's rights. The tribal code states that the tribal prosecutor is responsible for asserting victim's rights.
- What happens now? What are Kara's options?

Please place thoughts in chat

Knowledge Check



- Kara's boyfriend has been convicted of sexual assault in tribal court. Kara wants to seek restitution from her offender and wants provide a victim's impact statement and asks her advocate for assistance with that.
- What should happen next?

Please place thoughts in chat

Knowledge Check



- Kara has just been informed that the prosecutor and defense attorney have entered into a plea agreement, and her boyfriend was sentenced yesterday. Kara received no notice from the prosecutor or the defense attorney.
- What are Kara's options now?

Please place thoughts in chat

Recall The Role of Victim Advocates

- Provide safety planning and support.
- Help victims understand and exercise their rights.
- Assist with filing protection orders and court preparation.
- Serve as a bridge between victims and systems.
- Accompany victim during each step from reporting crime, forensic exams, appointments with investigators, prosecutors, prepare for trial testimony, and provide emotional support to victim and secondary victims.
- Support victims regardless of reporting or prosecution choices.



What Housing Services Might a Victim of Crime Need?

Housing

- [HUD Page](#)-On September 12, 2024, HUD, U.S. Department of Agriculture, U.S. Department of the Treasury, U.S. Department of Veterans Affairs, and U.S. Department of Justice issued an Interagency Statement on VAWA's Housing Provisions affirming the housing rights of survivors of domestic violence, dating violence, sexual assault, and stalking as well as others under the Violence Against Women Act (VAWA). To file a discrimination complaint for HUD see [Report Housing Discrimination | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](#).
- At the federal level, survivors of domestic violence have special protections under the Violence Against Women Act when a survivor is benefitting from a federal funded housing program including: HUD'S Housing Choice Voucher (Section 8), Public Housing, USDA Rural Development Housing, and Tribal Housing programs funded through the Indian Housing Block Grant.
- Tribal Protections- Tribal governments have the inherent authority to draft their own civil codes, housing policies, and specific domestic violence protections. These protections may vary by tribe. Look directly at the tribe's landlord-tenant code, domestic violence code, tribal housing authorities' policies and procedures, and tribal rules for eviction, transfer and eligibility.



Where to Find Legal Assistance for Victims of Crime

Legal Assistance- Legal Aid Services, Law School Clinics, and other pro bono legal agencies. See [Find Legal Help by State | LawHelp.org | Find free legal help and information about your legal rights from nonprofit legal aid providers in your state](#) for state specific and topic specific free or low-cost legal providers.

State Bar Attorney Associations may each keep of list of low-cost legal service providers. For information on each state's attorney bar association contact info see [State Bar Associations | List of Statewide Attorney Bar Associations](#).



What Services Might A Victim Need if Employment Discrimination has Occurred?

Employment- See the Equal Employment Opportunity website for employment discrimination complaints. Most employers with at least 15 employees are covered by EEOC laws (20 employees in age discrimination cases). Most labor unions and employment agencies are also covered. See [Overview | U.S. Equal Employment Opportunity Commission](#).

Tribal Employment Rights Office (TERO) might also be a contact. The National TERO office information is at [TERO FAQ – Council for Tribal Employment Rights](#). Note that tribal TERO's may vary. Some tribal TEROS have memorandum of understanding with the EEOC that may provide discrimination relief.



What Services Might Victims of Crime Need?

Victim's Compensation

[50 State Victim Compensation Guides](#)-Every state has its own victims compensation program with unique eligibility rules, benefit caps, and deadlines. Select your state below to learn exactly what you may be entitled to — completely free

Restitution- Legal representation may be need to properly litigate this issue. The victim's right attorney/lay legal advocate should enter an appearance in the case and make the request for restitution at the beginning and again after a finding of guilt. Prepare the necessary documents to support the request and be sure any sentencing order or order of guilt contains the restitution language.

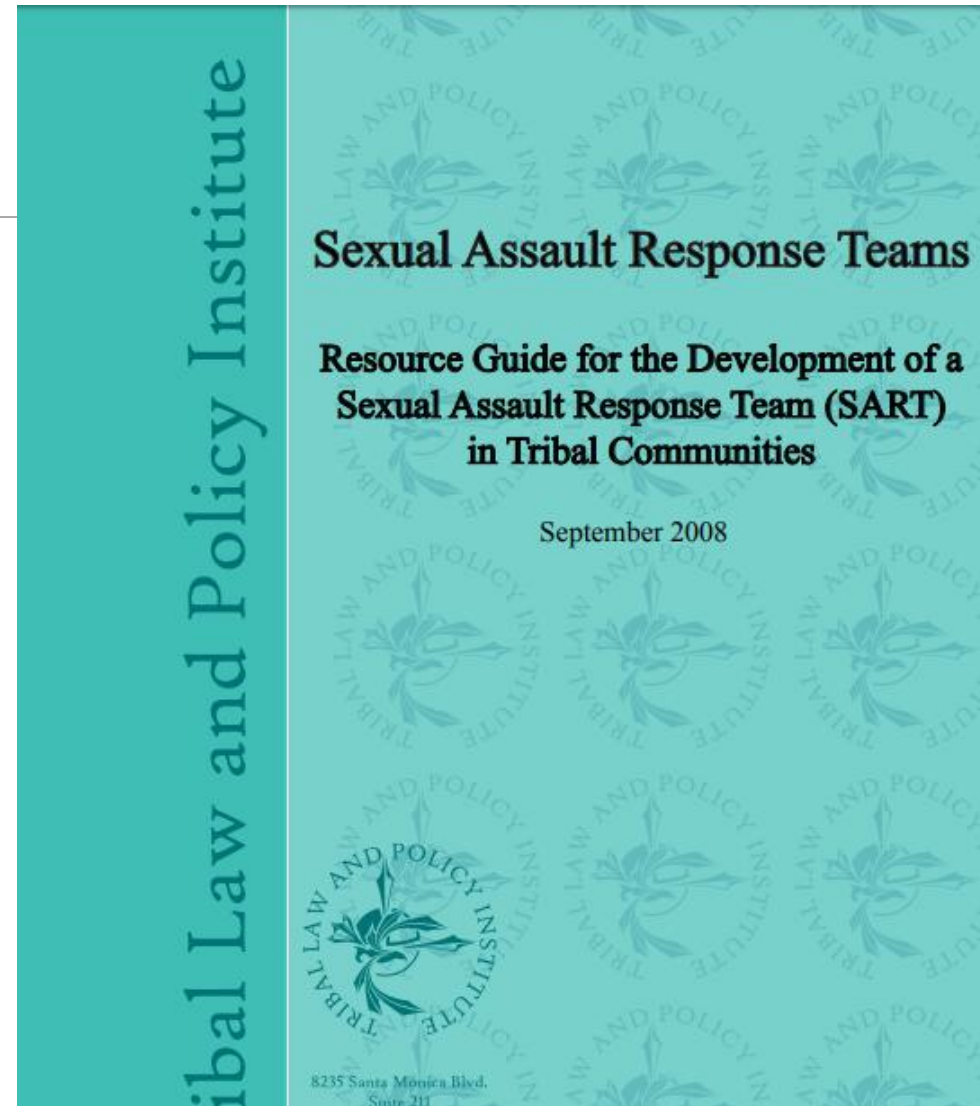


Useful Resources



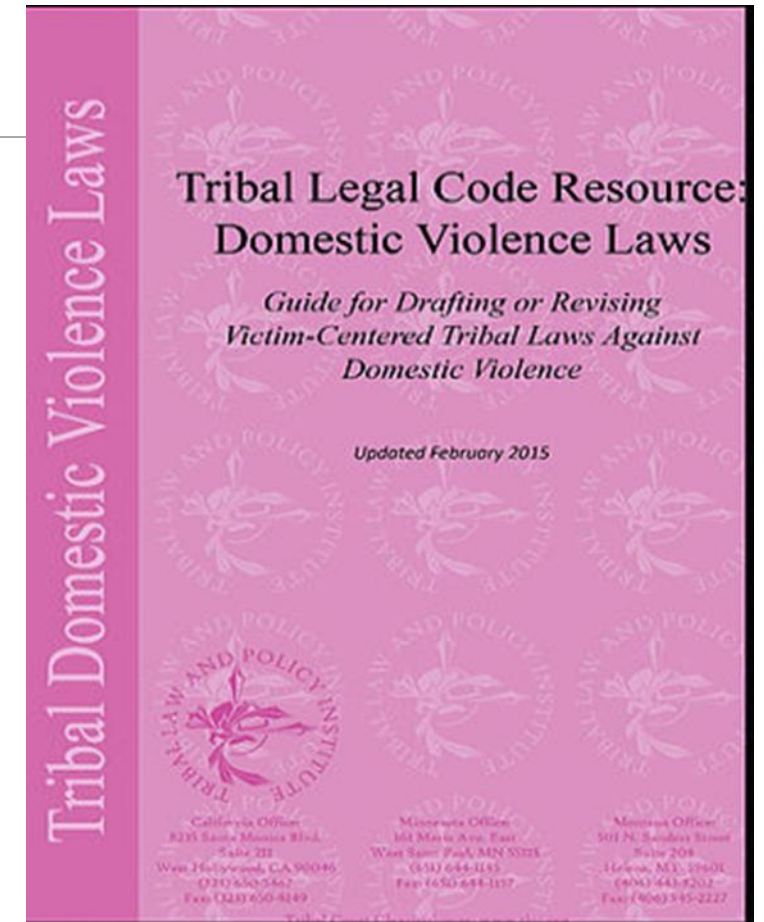
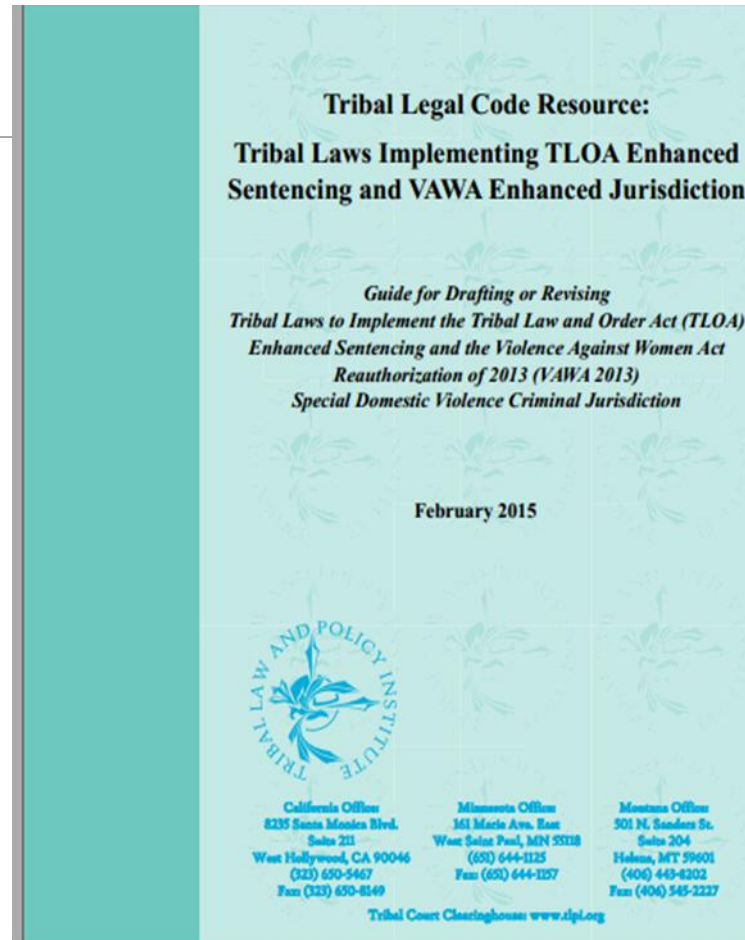
Sexual Assault Response Teams

Can be downloaded for free at: http://www.tribal-law-institute.org/download/SART_Manual_09_08.pdf



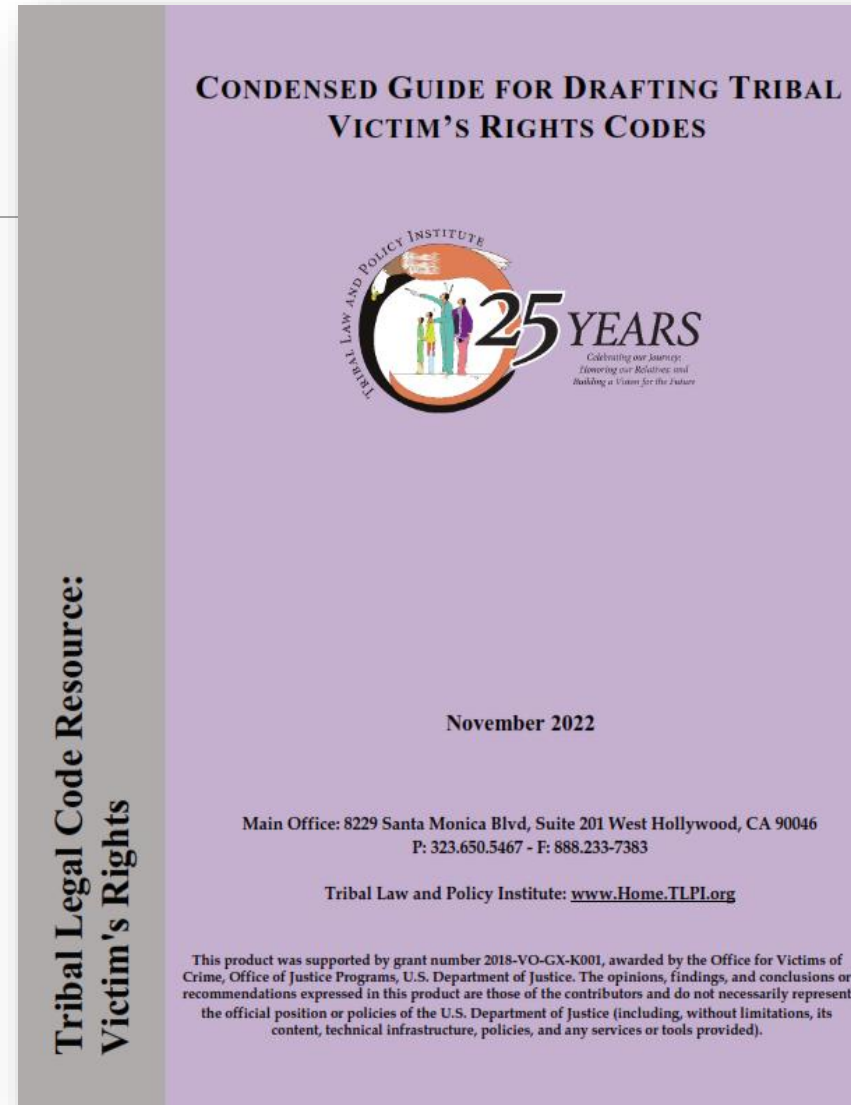
Tribal Legal Code Resources

- Tribal Laws Implementing TLOA Enhanced Sentencing and VAWA Enhanced Jurisdiction can be downloaded for free at: http://docs.wixstatic.com/ugd/8305c9_49314c224a4a4dee813a029275cef79f.pdf
- Guide for Drafting or Revising Victim-Centered Tribal Laws Against Domestic Violence can be downloaded for free at: [http://www.tribal-law-and-policy-institute.org/download/Amended%2520Domestic Violence Code Resou](http://www.tribal-law-and-policy-institute.org/download/Amended%2520Domestic%20Violence%20Code%20Resou)



Tribal Legal Code Resource: Victim's Rights, Condensed Guide For Drafting Tribal Victim's Rights Codes

Tribal Legal Code Resource: Victim's Rights, Condensed Guide for Drafting Tribal Victim's Rights Codes is designed to assist tribal governments with the development of victim right's codes. This resource was written with the belief that tribal governments have the ability to draft victim right's laws centered on their tribal beliefs that convey compassion for those harmed by crime and the importance of protecting the rights of victims, and to prevent revictimization.



Pocket Guide: Tribal Victim Advocacy in Criminal Cases

Pocket Guide: Tribal Victim Advocacy in Criminal Cases is designed particularly for community-based advocates as a quick reference guide to better assist victims as they navigate the criminal legal process. This Pocket Guide contains things such as a quick review of the general criminal legal process and victim rights with an emphasis on safety planning at every juncture. While this Pocket Guide is designed primarily for community-based advocates, it may be useful for other professionals who work with victims.



Pocket Guide: Tribal Victim Advocacy in Criminal Cases

POCKET GUIDE: TRIBAL VICTIM ADVOCACY IN CRIMINAL CASES



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Grassroots Advocacy Video

Grassroots Advocacy is a short 11-minute video to assist with training and other needs of tribal victim service providers. The video reviews the importance of maintaining the integrity of grassroots advocacy as a model of victim empowerment and social change. As more and more victim advocates are located within various systems including hospitals and clinics, it is vital to victim safety for victim advocates to understand the tenets of grassroots advocacy approaches that prioritize victim safety, victim centeredness, and utilizes/incorporates cultural traditions into advocacy. This video was co-created by TLPI, the Native Alliance Against Violence, and the National Criminal Justice Training Center.

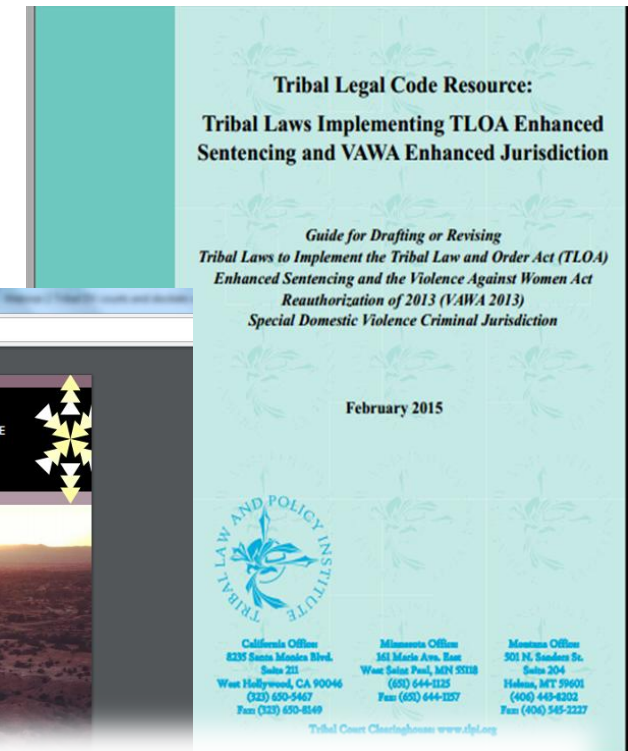
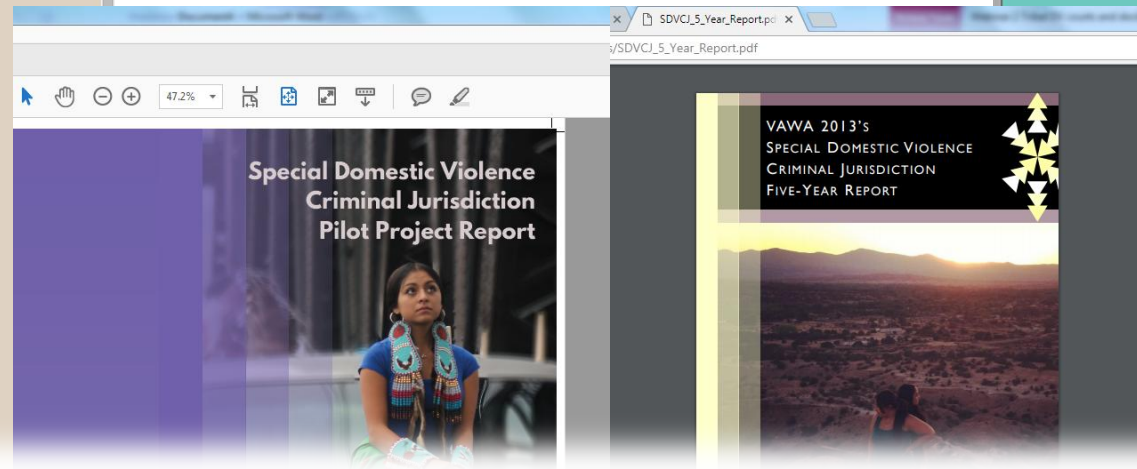


<https://www.youtube.com/watch?v=qCpT8mhuGOU>

www.tribalprotectionorder.org



VAWA Special Domestic Violence Criminal Jurisdiction Resources

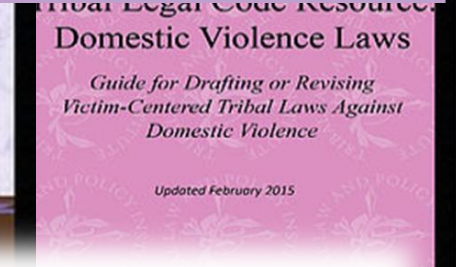
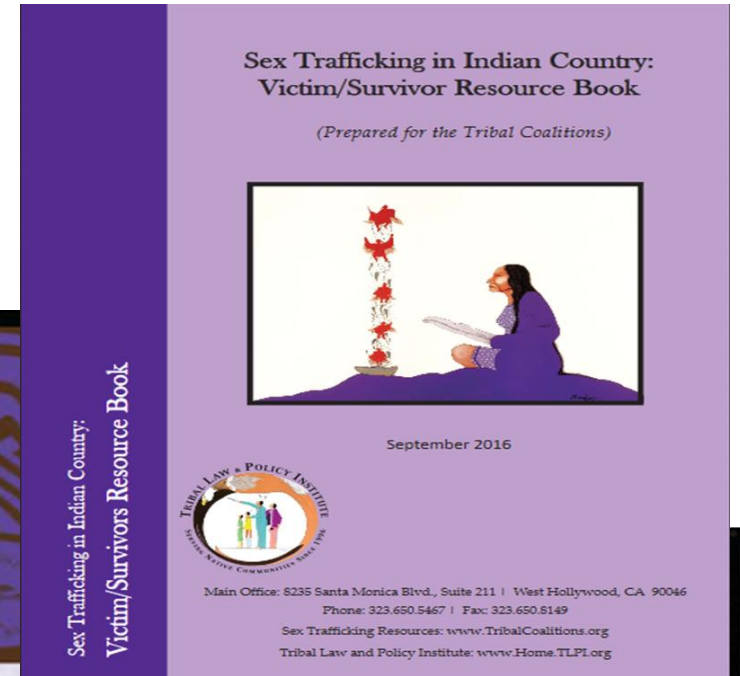
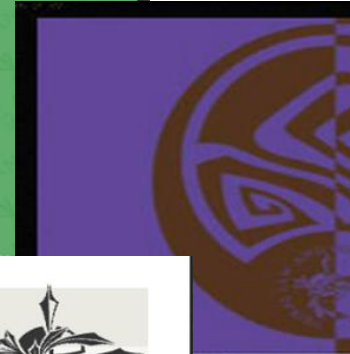
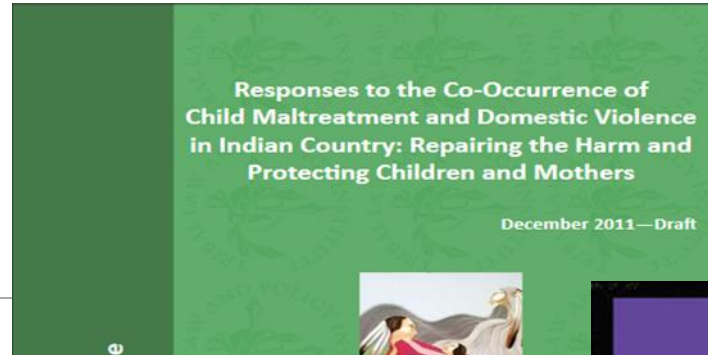
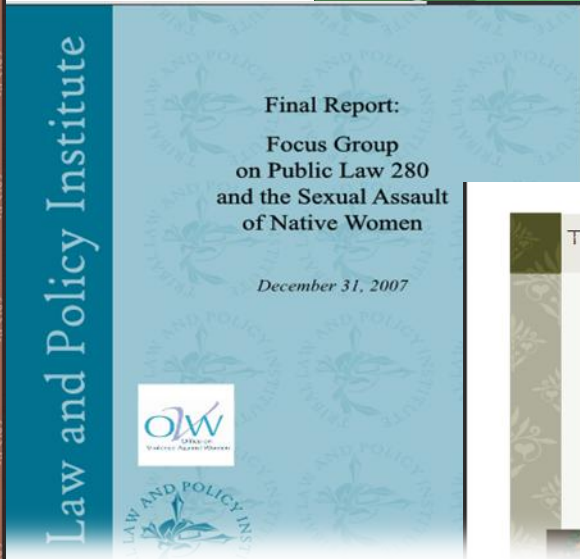
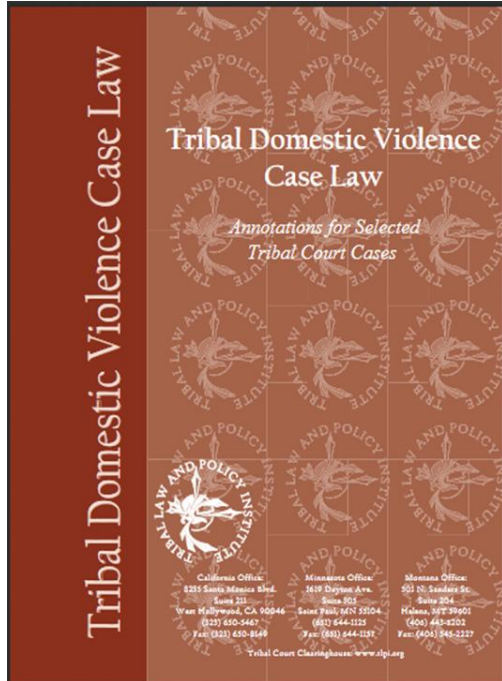


TLPI Publications: www.TLPI.org or www.Home.TLPI.org

NCAI Tribal VAWA Resources: <http://www.ncai.org/tribal-vaaw>



TLPI Publications & Web Resources



Tribal Court Clearinghouse: www.TLPI.org or www.Home.TLPI.org

Tribal Protection Order Resources: www.tribalprotectionorder.org

Sex Trafficking Resources: www.tribaltrafficking.org



THANK YOU!!!

Questions?

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TLPI website www.Home.TLPI.org



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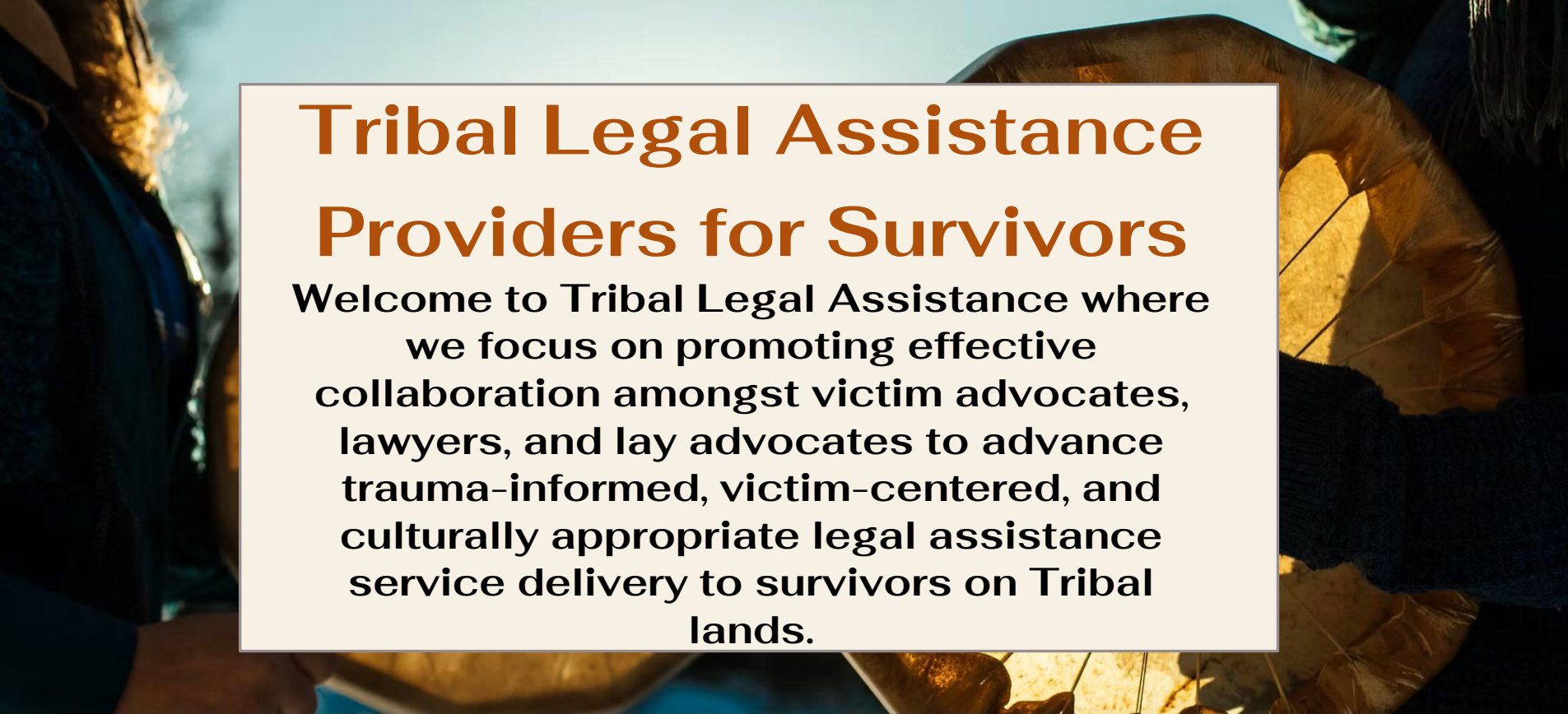
Requesting Technical Assistance



There is no wrong way to request TA - you can also request individual TA by emailing or calling us

- Examples of Individual TA that you can request:
 - Assistance in finding a particular resource
 - Questions about individual cases/situations (note: we can't give legal advice)
 - Examples of procedures, policy, or codes
 - Support developing procedures or policies
 - Support developing an MOU with an advocacy program, legal services provider, or others

For more information, please visit the project website:
www.TribalLegalAssistance.org



Tribal Legal Assistance Providers for Survivors

Welcome to Tribal Legal Assistance where we focus on promoting effective collaboration amongst victim advocates, lawyers, and lay advocates to advance trauma-informed, victim-centered, and culturally appropriate legal assistance service delivery to survivors on Tribal lands.

Please complete the webinar evaluation using the link or
QR code below, thanks!

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