

Working Together in Divorce and Custody Matters



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Disclaimer

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Learning Objectives

Civil Jurisdiction Refresher

- Basics

Specific Code Sections

- When DV, SA, Stalking is present

Custody

- Protecting enforceability
- Child support

Visitation

- Terms to request

Promoting Safety

- Physical & Digital

Empowering Your Client

- Protecting their voice

Animals and Pets

- Tips for their protection

Civil Jurisdiction Refresher



Knowledge Check



What jurisdictional issues do you have to be mindful of when thinking about which court to file in?

What if something is already filed and you'll be responding?

Please place thoughts in chat

Jurisdictional Considerations



Personal Jurisdiction



Subject Matter Jurisdiction



Protection Orders

PERSONAL JURISDICTION IN INDIAN COUNTRY

Member Indian

Broad, expansive, and generally exclusive except where PL 280 applies where it is concurrent. This authority is a direct expression of inherent tribal sovereignty to govern its people and to protect and enhance the health, safety, and welfare of tribal citizens within tribal territory. The laws of the Tribe are presumed to apply.

Non-member Indian

More extensive than over non-Indians but more limited than over members. In civil matters, non-member Indians can be treated similarly to non-Indians

Non-Indian

Presumptively limited. A tribe's civil authority over a non-Indian is limited unless the non-Indian's activities fall under one of the two *Montana* exceptions as further defined in case law.



SUBJECT MATTER JURISDICTION IN INDIAN COUNTRY

- Tribal Code
 - Over what cases have they exerted jurisdiction?
- Sometimes: Local practice – PL 280 areas where there is concurrent jurisdiction, what have sovereigns agreed upon?

PROTECTION ORDERS IN INDIAN COUNTRY

VAWA - [18 U.S.C. 2265\(e\)](#):

For purposes of this section, a court of an Indian Tribe shall have full civil jurisdiction **to issue and enforce** protection orders ***involving any person***, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, *in matters arising anywhere in the Indian country of the Indian Tribe* (as defined in [section 1151](#)) or otherwise within the authority of the Indian Tribe. (emphasis added)



Alaska Native Nations Civil Jurisdiction

PL 280 only applies in Indian Country

Venetie Very Little “Indian Country” in Alaska - Alaska v. Native Village of Venetie Tribal Government et. al., 522 U.S. 520 1998

John v. Baker Alaska Native Nations have concurrent jurisdiction over matters involving the personal relations of tribal members such as child custody outside Indian country. Jurisdiction grounded in membership and inherent sovereignty [John v. Baker 982, Alaska 1999]

ALASKA NATIVE NATIONS SUBJECT MATTER JURISDICTION

🦅 **Custody - John v. Baker** Alaska Native Nations have concurrent jurisdiction over matters involving the personal relations of tribal members such as child custody outside Indian country. This case confirmed **tribal membership** as a significant basis for tribal jurisdiction and it is anchored in Alaska Native Nations' inherent sovereignty. [John v. Baker 982, Alaska 1999] 2001

🦅 **Child Support**



Alaska Native Nations – Protection Orders

Indian Country as is everywhere else in PL 280 jurisdictions

Outside of Indian Country - VAWA tied to Villages

"The term 'village' means the Alaska Native Village Statistical Area covering all or any portion of a Native village (as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)), as depicted on the applicable Tribal Statistical Area Program Verification map of the Bureau of the Census. "

Outside of Indian Country and Villages -



SPECIFIC CODE PROVISIONS



Knowledge Check: What civil code provisions have you seen that address the presence of domestic violence, sexual assault and stalking?

How are they implemented where you practice?

Please put responses in the chat

EFFECT OF DV: REVIEW THE TRIBE'S CODE

Does the Tribal code have protections built into its code? *Work with victim advocates to learn if they exist and how they've been applied*

- Prohibition on ***mediation and/or counseling*** in cases involving domestic violence
- Prohibition or protections when ***restorative justice methods*** are applied
- Rebuttable presumption against ***custody*** for a perpetrator of domestic violence
- Rebuttable presumption that it is ***in the best interest of the child*** to reside with the non-offending parent
- A finding of domestic violence establishes a **change in circumstances** when a modification of an order for custody or visitation is at issue
- ***Special requirements*** when ordering *visitation* in cases involving domestic violence



IF THEY ARE NOT IN THE CODE

- Does tribal code allow you to look at other tribal, federal, or state laws for guidance?
- If not, best interests of child is the norm; always
 - Document harm to child,
 - Document continued harm to the survivor
- Custody modifications when specific code provisions aren't present – generally, change of circumstances



CHILD SUPPORT & CHILD CUSTODY



CHILD SUPPORT

- Your client's needs
 - How delivered
 - Enforcement
 - Modifications



CHILD CUSTODY Enforceability



Knowledge check: with custody,
what enforceability issues do you
need to be aware of?

Please place thoughts in chat

CUSTODY - ENFORCEABILITY

Residency of child *can* be a factor in child custody cases - UCCJEA

§ 104 state court to recognize and enforce tribal court orders, treating a Tribe as if it were a state for the purposes of applying the Act, as long as the tribal proceeding was conducted in substantial conformity with the UCCJEA's jurisdictional standards. This provision facilitates cross-jurisdictional cooperation in child custody matters, promoting the welfare of Indian children by ensuring that custody determinations made by tribal courts are given due respect and enforceability in state courts

§ 204, a court can exercise "Temporary Emergency Jurisdiction" if 1. The child is present in the state (or on tribal land). 2. The child, a sibling, or a parent is subjected to or threatened with mistreatment or abuse.



ENFORCEABILITY (CON'T)

Parental Kidnapping Prevention Act (PKPA)

- One jurisdiction at a time
- Strong preference for the "home state"



VISITATION – PROTECTING YOUR CLIENT & THE CHILDREN



TERMS OF VISITATION TO CONSIDER INCLUDING IN ORDERS

- Right of first refusal
- Drop off and pick up: exchanging the children safely
- Holidays and ceremony –
 - Ask about specific traditions and get those in the order
- Travel considerations
 - Make sure Tribe you are traveling to knows of court orders
- Other relatives
 - Short term care: make sure client has control over who can pick up child from appointments, babysitting, relationships with family and community
- When at same community events
- Modifications



SAFETY

Knowledge check: in divorce & custody matters, what steps should you take to ensure the safety of the victim and the children?



Please place ideas in chat

PHYSICAL SAFETY

- Work with Advocates to create a safety plan
- Restraining orders – now less burdensome in some jurisdictions because of VAWA
- Other remedies:
 - Contempt of court,
 - Exclusion from the reservation,
 - Fines and fees, restitution, attorney's fees and court costs, batterer reeducation and accountability programs, community service, forfeiture, and loss of licensure or other privileges.



DIGITAL SAFETY

Survivors need to be able to use technology for everyday life. (notifications, communication, applications) but tech can be used against them.

- Create a digital safety plan:
 - Change passwords/use a password manager (change the locks)
 - Do they know your passwords/share them/easy to guess?
 - Did you log onto your accounts from their devices? Passwords saved there?
 - Get information off of “people search” databases (like confidential address program but online)
 - Remove & turn off tracking devices and location services
- Address tech enabled trauma
 - Posting of pictures & misinformation about client



EMPOWERING & PROTECTING VICTIM VOICES



SUPPORT AND PROTECT YOUR CLIENT'S VOICE

- Communication Plans
 - Methods and frequency of updates ensure both parents remain involved in important decisions *when appropriate*
- Ensure safety plan will be honored
- Mediation and Restorative Justice Practices

PETS AND ANIMALS

IMPORTANT BECAUSE OFTEN USED AS LEVERAGE



TIPS TO PROTECT

- Include pets & animals in safety planning (animal go-bag, pictures of pet)
- Discuss with your client – evidence is key
 - Ensure pet's files are under their name
- Update microchip registry but *don't put your new address in the registry if safety a consideration. Use a friend's address or ask about privacy settings as the vet*
- Request possession in protection orders, temporary orders, and final divorce decrees
- Ask that the abuser be ordered to stay a specified distance away from them
- Know pet friendly shelter options/emergency confidential boarding offered by some vet offices
- How are they treated in tribal code? Best interests standard rather than treating them as property

Questions? Discussion?



THANK YOU!

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

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Please Join Us for Upcoming Webinars!

July 15, 2026 Trauma Informed Lawyering

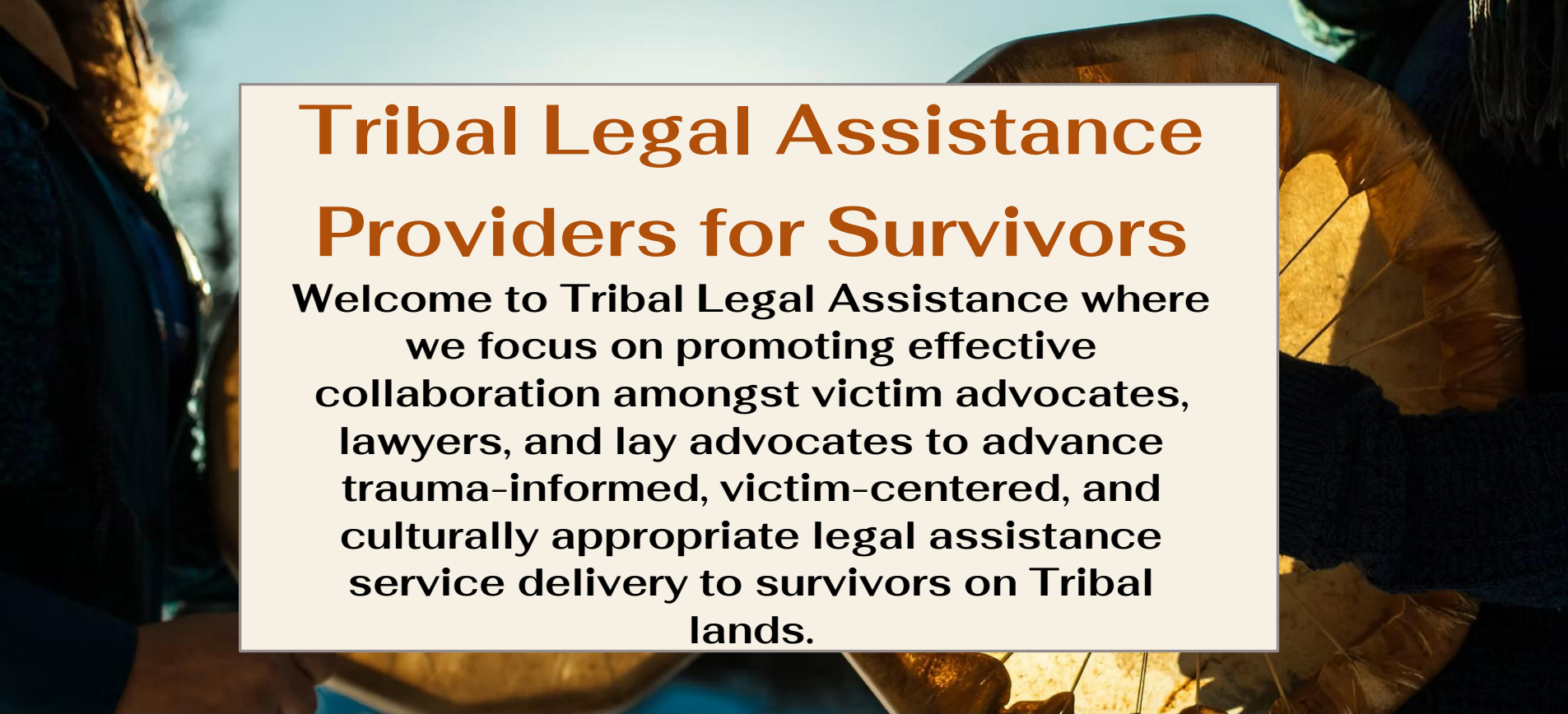
Impacts of client trauma can affect every area of legal representation. Trauma-Informed lawyering includes respecting the client's expertise and ensuring the client's goals and objectives are met. The attorney should strive for transparency, predictability, client-centered representation, reliability, proactive support, and patience. This webinar will delve into the different types of trauma responses, impacts of trauma on legal practices, benefits of lawyers utilizing trauma-informed practices, and understanding the connection of confidentiality and privilege on victim safety. The webinar will also present the six principles for trauma-informed practices and will conclude with a discussion on participants' strategies for implementing trauma-informed practices into their legal representation.

August 19, 2026 Victim's Rights

In this webinar, participants will receive information on Victim's Rights in Indian Country. The presentation will address why Victim's Rights are beneficial to victims and their families. Next, the webinar focuses on how to navigate multiple jurisdictions. The presentation will address the various definitions of "victim" for purposes of asserting victim's rights and then moves to enforcement of victim's rights. The webinar concludes with useful tools to utilize when working with victims asserting their victim's rights



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.**

Request Individual TA Through the Project Website:
www.TribalLegalAssistance.org



Other Ways to Request TA

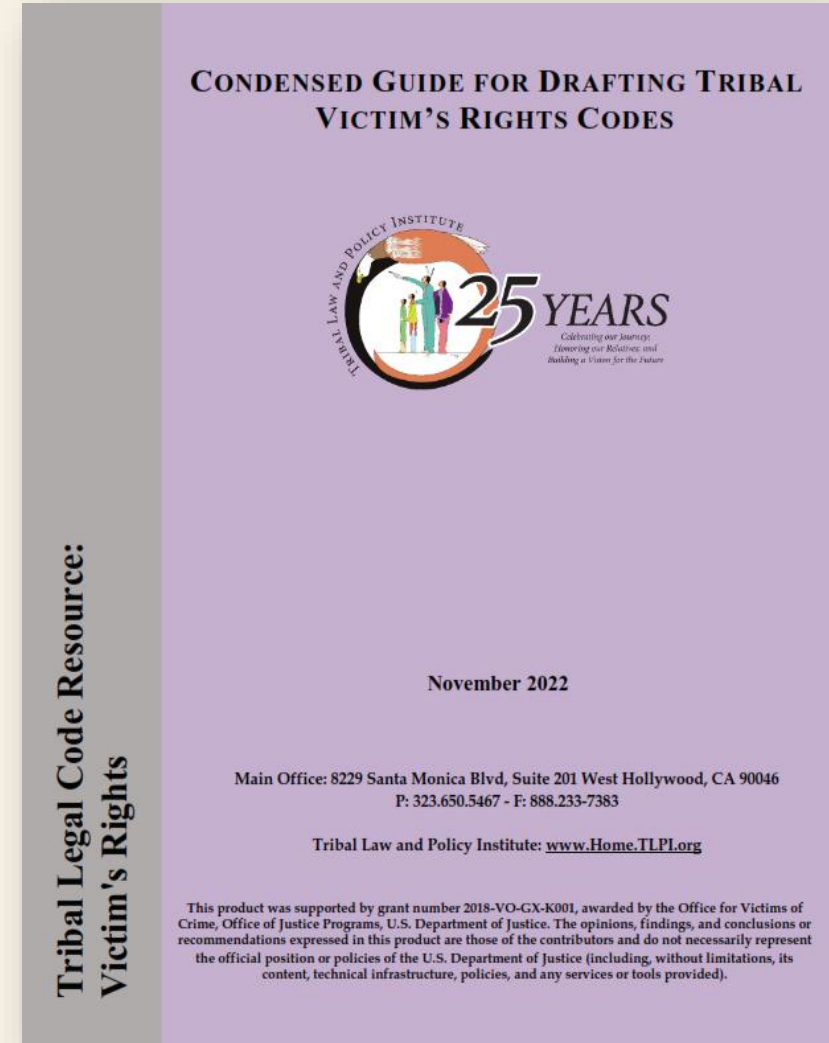
There is no wrong way to request TA - you can also request individual TA by emailing or calling us

- Examples of Individual TA that you can request:
 - Assistance in finding a particular resource
 - Questions about individual cases/situations (but 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



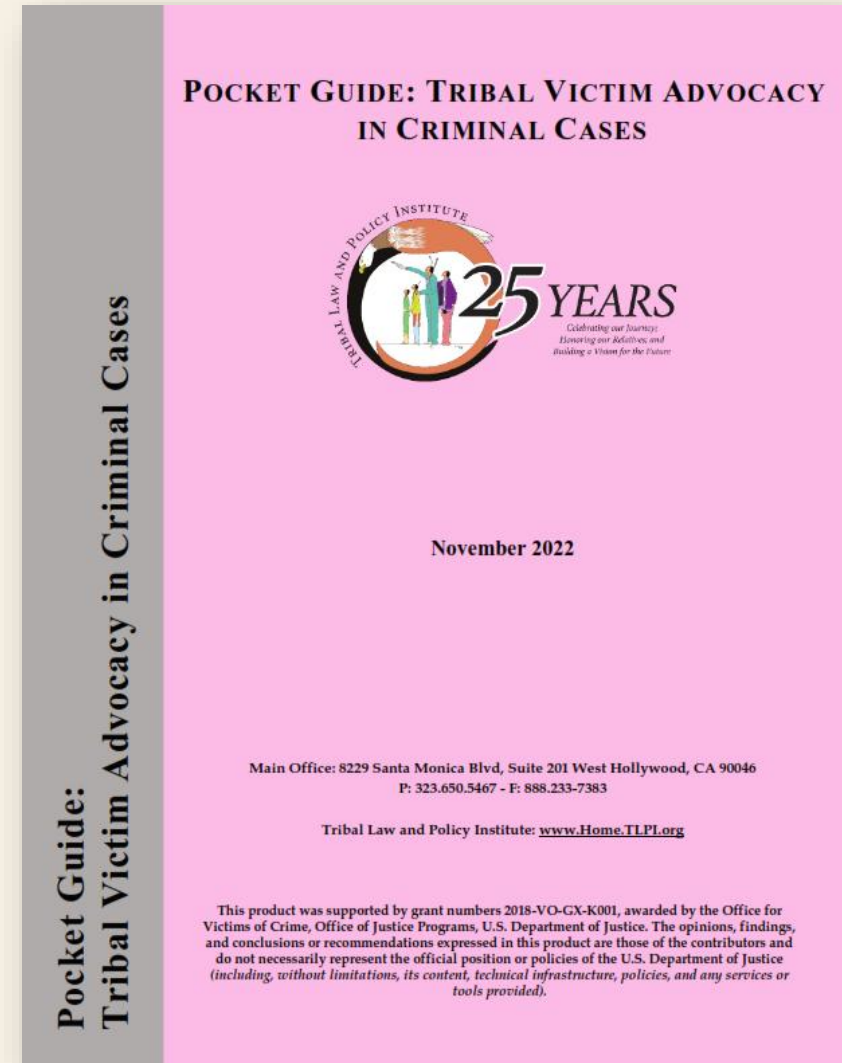
Tribal Legal Code Resource: Victim's Rights, Condensed Guide For Drafting Tribal Victim's Rights Codes

[*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.



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