



Tribal Advocates Curriculum: Presentation Guide

DOMESTIC VIOLENCE, SEXUAL
ASSAULT, AND STALKING

MARCH 2012



ADMINISTRATIVE OFFICE
OF THE COURTS

CENTER FOR FAMILIES, CHILDREN
& THE COURTS

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OF THE COURTS

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Special acknowledgements extend to all participants and consultants on the Native American Communities Justice Project (NACJP) 2008–2009, without whose voices this curriculum would not have been developed.

DEDICATION

This curriculum is dedicated to all those impacted by domestic violence and sexual assault. We would like to make a special dedication to tribal communities in California that have endured violence historically and presently. The future of tribal communities in addressing domestic violence and sexual assault will continue to improve as tribal and nontribal advocates, tribal elders, and communities come together and work toward peaceful relations.

Disclaimer

The manual is intended as a training and reference manual for lay advocates. The information in this manual is not legal advice. Advocates cannot give legal advice. While information is as accurate and up-to-date as possible on the date of publication, the law is constantly changing. The Administrative Office of the Courts Center for Families, Children & the Courts takes no responsibility for the accuracy of the information in this manual or for the applicability of any law to an individual case. This manual is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations.

Language Usage

Because the overwhelming majority of domestic violence victims are women abused by male partners, this manual uses “she” or “battered woman” when referring to victims, and “he” when referring to batterers or perpetrators. All victims of domestic violence deserve support and responsive advocacy, including victims in same-sex relationships and male victims abused by female partners.



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About this Curriculum

This curriculum is intended for California lay legal tribal advocates in the field of domestic violence. A lay legal advocate is a person who provides information and explains options and rights within all aspects of the legal system, but cannot provide legal advice. This person is usually employed by a nongovernmental agency and provides services to individuals who may or may not already be involved in the legal system. A lay legal advocate usually provides information and resources for all legal systems, not just criminal.

This curriculum was created in response to the Native American Communities Justice Project, a short-term project designed by the Administrative Office of the Courts (AOC) to enhance access to and improve the administration of justice for Native American victims of domestic violence. Drawing on community expertise and guidance, this project engaged tribal communities in identifying needs relating to domestic violence. The NACJP involved collaborating with tribes and community members to gather information about and develop strategies to address the needs of Native American victims of family violence. One of the recommendations of the NACJP was that the AOC develop a curriculum for tribal advocates on accessing and navigating the state court system in cases of domestic violence cases. With funding from CalEMA, the AOC in collaboration with the Kene Me-Wu Family Healing Center, Inc., developed this curriculum.

We invite tribal advocates and others to critique this curriculum so that we may improve upon it. After incorporating feedback, the AOC will post the curriculum to its website along with other domestic violence resources. It is our goal that this curriculum complements the many wonderful educational resources developed by tribal advocacy organizations in California.

I. Competencies

Participants will develop:

C1. An understanding of their role in enhancing safety for Indian families; a foundational knowledge about the emotional, social, cultural, and legal dynamics of domestic violence; a heightened awareness of Indian cultural norms and values, in order to become better advocates for Native women.

C2. An understanding of their role within the framework of tribal, community, county, and state services and institutions, in order to better access and connect Native women to available and appropriate resources.

II. Learning Objectives

A. Knowledge (cognitive objectives)

Participants will know/understand:

K1. The principles of lay legal advocacy and their role.

K2. The nature and extent of domestic violence, including next-generation impacts.

K3. The California statutory/legal framework for responding to domestic violence.

K4. The roles and responsibilities of judges, court-connected services, law enforcement, the district attorney and defense attorney, and victim witness services as they relate to domestic violence, particularly victim safety and enforcement.

K5. How to access and connect battered individuals to available appropriate resources.

B. Skills (behavioral objectives)

Participants will be able to:

S1. Make appropriate inquiries to help clients self-identify and assess their own risks in abusive relationships.

S2. Demonstrate an ability to effectively assist (without giving legal advice) a battered woman or man seeking a California court protective order to prepare an adequate declaration and understand how to effectuate service of process.

S3. Develop strategies for accessing and connecting battered women and men to available appropriate resources.

S4. Show an ability to communicate respectful awareness of Indian cultural norms and values.

C. Values (affective objectives)

Participants will:

V1. Value safety for Indian families as their primary goal.

V2. Appreciate and respect cultural norms and values of Indian people.

PART ONE: OPENING AND INTRODUCTIONS

[PowerPoint slides 1–6]

I. Opening [Invocation or Blessing]

It is customary at a tribal meeting, gathering, ceremony, or training for a tribal elder and/or a traditional healer from a tribe in the area to give an invocation or blessing. If a tribal elder or healer is not present, then a tribal member, again from the area, should be asked to give the invocation. The invocation or blessing may be in the language of the tribe or in English. The elder or healer will typically begin by introducing him or herself, say a few words on the topic of the day, and then finish with song and/or a moment of silence. He or she will typically give the invocation three times: at the beginning of the event, before lunch, and at the conclusion of the day.

This training is intended to be delivered with such a traditional invocation or blessing. In order to ensure the training is in keeping with this tradition, you should speak with the tribal elder and/or traditional healer beforehand both to ask them to give the invocation and to share with them the subject of the training. With this information, the elder or healer will be able to focus the participants on the topic of the training and acknowledge that while participants have different backgrounds and experiences, they come together with shared purposes:

- to reclaim freedom from fear of domestic violence;
- to create and support safe and healthy families; and
- to end the cycle of family violence for future generations.

It is customary, at the end of the training, to give a small token of appreciation to the tribal elder or healer. Typically, this gift is in the form of pure tobacco (a loose packet of Native American spirit or bugler brand) wrapped in cloth made of cotton, sage, or blanket, and/or if the training is held at a nonprofit or governmental agency, the gift may be agency-related materials (i.e., agency t-shirt, bag).

II. Faculty Introductions

You will want to engage the audience in a brief description of who you are as faculty before beginning the training.

- State your name.
- Indicate if you are a descendant or member/enrolled in a tribe(s).
- If you are from a tribe(s), you may want to state the area your tribe(s) are from, the clan or moiety, and even the families you are from.

- Describe the degrees you have and include your career background briefly.
- If it is a small training class, you may want to have participants introduce themselves.
- It is beneficial to then give a brief overview of the training day.

III. Historical Context

Teaching Points:

- Domestic violence, sexual assault, teen dating violence, and stalking are not traditional practices or values in Native American tribes. Traditionally, women were respected and highly revered. In many tribes, women held esteemed positions in government and/or could be medicine women.
- In California, European contact changed tribal living and how women were treated. Here are the main historical points of violence that traumatized and decimated thousands of California Indian women, men, and children.

A. Historical overview

- Spaniards came to California with the intent to control, claim, and dictate the land for the Spanish crown through fear and violence, especially toward Native women. Spanish priests and soldiers routinely severely physically abused, murdered, and sexually assaulted Native women, men, and children, who were captured and enslaved in nearby missions or taken to missions that had recent death. During the mission period, the Native population from San Diego to San Francisco fell from an estimated 72,000 to 18,000--a decline of more than 75 percent. <http://www.californiahistoricalsociety.org/timeline/chapter4/010.html>. There was a high rate of death at each mission due to violence from Spaniards to Native people or due to disease. It was the first experience of extreme violence for tribes in California.
www.nps.gov/history/history/online_books/5views/5views1a.htm
- The gold seekers in the 1800s brought further violence to Native American men, women, and children. Pacheco Pass Highway was one of the main routes gold seekers used and was also the area where the most extreme violent battles occurred between Europeans and tribes. www.militarymuseum.org/Miwok.html
- In 1850, California became the newest state to be a part of the United States and introduced laws that permitted the murder and enslavement of Native men, women, and children.
www.nps.gov/history/history/online_books/5views/5views1c.htm
- The boarding school era in the late 1800s signified another point in time where children were forced into a foreign system by the Federal government in an effort to become assimilated into American society through fear and violence.

Boarding schools for Native children across the country dictated that the children's hair be cut upon arrival to school, and sometimes sprayed with DDT. They were forbidden from speaking their language, physically abused by those running the school for the slightest break in the rules, sexually abused by the authorities regularly, and not allowed to return home or have their families visit for years on end. Dorm moms were often absent or consumed by alcohol, and children were not educated in typical academics we commonly associate with boarding schools, but instead trained for menial labor.

www.nps.gov/history/history/online_books/5views/5views1d.htm

B. Links to more information on history www.courts.ca.gov/3066.htm

PART TWO: DOMESTIC VIOLENCE AND SEXUAL ASSAULT—GENERAL CONCEPTS AND CULTURAL CONSIDERATIONS [PowerPoint slides 7–29]

Teaching Points:

- Reviewing potential reactions an American Indian victim may exhibit as a result of domestic violence and/or sexual violence
- Discussing domestic violence definitions and emphasizing that not every relationship containing domestic violence will appear the same
- Recognizing and discussing issues within the group's experiences with litigant referrals and legal issues
- Assisting a litigant with drafting a declaration
- Having a candid discussion about some of the reasons an American Indian victim may not report (mistrust of government officials, etc.)

I. Experiences of the American Indian Victim of Domestic Violence

A. Introduction

Suggested wording:

To begin our discussion, we will focus on the experiences of the American Indian victim of domestic or sexual violence. This will create a common context for all that follows in today's program, draw on the experience of everyone in the room, and, hopefully, strengthen our skills as Tribal Advocates by deepening our understanding.

B. Exercise and discussion—Activity: Taking a Closer Look (see Appendix A-1)

- Ask participants to form groups of two or three, depending on the size of the group and seating configuration.
- Ask each group to talk about the experiences of the American Indian victim of

domestic violence or sexual abuse. Suggested wording: *Please take a moment to think about the potential experiences of American Indian victims of domestic or sexual violence. These characteristics may also be generally or sometimes true of any victim of these crimes, but many will be unique and specific to Native women. How would you describe the clients you have seen? What are their circumstances? What factors affect them, either internal or external? After a few moments, please discuss your thoughts with your small group, with one person making a list of the ideas you come up with. We are not asking you to stereotype victims of domestic or sexual violence. Rather, we want to identify some of the feelings and experiences that you have heard from litigants you've seen. After five to six minutes, we will reconvene and discuss your ideas as a group.*

- After five minutes, announce that one minute remains, and ask each group to make sure that everyone has had a chance to contribute.

C. Full group discussion

- Reconvene full group and ask each group, in turn, to list 2 or 3 comments (2 if groups of two have participated, 3 if groups of three have participated) mentioned during the previous small group discussion. Ask groups that report after the first group to add only ideas not already reported by earlier groups. Respond to these reports in a way that foreshadows the list in the Power Point slide. Repeat this process until there are no more new ideas to report.
- When groups have finished reporting, tell participants that you will now show a list of potential experiences compiled from research, past trainings, and the experiences of other tribal advocates. Affirm that the group generated many if not most of the experiences listed, and ask them to read the slides as they are shown. Emphasize to the group that: *Not all victims experience the same issues or have the same socioeconomic, educational, historical, and mental health backgrounds. It is important not to stereotype American Indian victim experiences, backgrounds, or coping mechanisms.* The list of potential experiences is stated below in an expanded form:
 - Culturally/traditionally keeper of the home, hearth, and family
 - Low self-esteem
 - Feels guilt, self-blame, self-hatred, and may deny legitimacy of her own feelings and needs to keep the family together
 - Holds unrealistic hopes the batterer's behaviors and actions can change
 - May become increasingly isolated
 - Defines herself in terms of others' needs
 - Has a high risk for drug and alcohol abuse, which compounds the abuse she is already experiencing
 - Exhibits stress disorders, depression, and psychosomatic complaints
 - May reconcile with the batterer because of community and family pressures
 - Low educational levels; lacks competitive employment skills

- Usually receives some type of public assistance; Tribal Temporary Assistance for Needy Families (TANF) or welfare
- Suffering from depression to the extent even small decisions seem monumental; overwhelmed to the point of confusion
- Generational boarding school experience: will attempt to keep the family together at all costs, regardless of the danger to herself or the children
- Major distrust of mainstream agencies; law enforcement, Child Protective Services (CPS), and probation
- Peers, friends, and family may not be able to offer monetary assistance
- Has been displaced, disenfranchised from mainstream society for so long, cannot imagine life outside the rancheria or reservation

II. Domestic Violence: What Is it?

A. Introduction

Introduce by defining domestic violence generally and stressing the following points:

- Domestic violence comes in many forms and is known by many names.
- Domestic violence is defined in various ways, both legal and behavioral (this program will use the behavioral definition because it is more comprehensive).
- Most victims of domestic violence are women (this program will use language to reflect that fact).
- Domestic violence is a main cause of injury to women in this country: more women are injured by domestic violence than by auto accidents.
- Domestic violence is a crime.
- Domestic violence is a major social problem and touches the whole community.

B. Defining domestic violence

1. Basic definition:

“Battering is a pattern of coercive control that one person exercises over another. Abusers use physical and sexual violence, threats, emotional insults, and economic deprivation as a way to dominate their partners and get their way. Relationships in which one partner uses assault and coercion can be found among married and unmarried heterosexuals, lesbians, and gay males. Battering is a behavior that physically harms, arouses fear, prevents an individual from doing what she/he wishes, or forces her/him to behave in ways she/he does not want to.”

(Source: definition from Susan Schechter, early leader of domestic violence prevention)

2. Behavioral definition:

Domestic violence is a pattern of behaviors used to maintain control over an intimate partner. Domestic violence encompasses a number of behaviors, which include but are not limited to physical battering. In fact, physical violence may occur infrequently, but the other behaviors may be used against the victim on a daily basis. In this way the batterer constantly limits the victim's ability to act or think freely. The power and control for the batterer is achieved from domestic violence behaviors from past acts to its continuation and threats of future violence.

3. Legal definition:

Domestic violence includes both felony and misdemeanor crimes of violence committed by current or former spouses of the victim, a person who shares a child in common with the victim, a person cohabitating, a person similarly situated to the spouse of the victim, or any other adult person who is protected from that person's acts under domestic or family violence laws. The legal definition of domestic violence can be found in both civil and criminal laws.

C. Power and Control

1. State that domestic violence is a learned behavior; batterers learn to batter from their observations of other batterers, including family and friends.
2. State that all definitions of domestic violence acknowledge, either explicitly or implicitly, that the various, escalating behaviors and tactics used by perpetrators to control a partner within an intimate relationship context are intentional behaviors.
3. Refer to and discuss the Power and Control wheel and the Traditional, or Equality, wheel (See Appendix B).
4. Ask for questions and comments.
5. Summarize by asking a volunteer participant to describe patterns she has observed in the experiences of her litigants that demonstrate the dynamics of power and control. Reinforce participant's observations by suggesting a pattern that begins with a batterer's belief that one person has the right to

control and dominate the other, through behaviors that restrict the victim's life and control her thoughts and actions, to the use of physical and sexual violence when intimidation does not achieve compliance. Also emphasize that violence can escalate when a victim tries to leave. Suggested wording:

*Domestic violence is purposeful behavior, designed to achieve power and control over the victim. Abusive relationships are supported by the belief that one person has the right to control and dominate the other. The behaviors used by the perpetrator can restrict the life of the victim to a level that independent thought and actions are curtailed. Then the victim is devoted to fulfilling the needs of the perpetrator. When behaviors such as intimidation and mind games do not work to get compliance from the victim, the perpetrator uses actual physical and sexual violence. Even if there is no physical assault, those who may be battered will modify behaviors because they fear violence from their perpetrator. Abusers often escalate their use of violence when victims try to leave. Violence is then used as a method to control **and** punish.*

D. The Cycle of domestic violence

1. State that domestic violence can follow a pattern having three stages.
2. Describe the **Tension-Building Phase**:
 - Batterer may: pick fights, act jealous or possessive, be critical, yell, swear, use angry gestures or coercion, make threats, be moody or unpredictable, and/or drink or use other drugs.
 - Partner may: feel like she or he is “walking on egg shells”; be afraid or anxious; try to reason with, calm, or appease the batterer; become silent; and/or try to keep children quiet.
3. Describe the **Violence-Crisis Phase**:
 - Batterer may: verbally, emotionally, or physically abuse, sexually assault or restrain, or threaten partner, and/or destroy property.
 - Partner may: experience fear or shock, use self-defense, try to leave, call for help, pray for the violence to stop, and/or do what is necessary to survive.
4. Describe the **Seduction-Calm Phase**:
 - Batterer may: apologize, minimize or deny the abuse, ask for forgiveness, be affectionate, promise that it won't happen again and to change, and/or give gifts (this also explains how three dynamics— love, hope, and fear— keep the cycle in motion and

make it hard to end a violent relationship).

- Partner may: forgive, feel hopeful or manipulated, blame self, arrange for counseling, return home, and/or minimize or deny the abuse.

5. Describe how love, hope, and fear keep the cycle of violence in motion. Suggested wording: *Love, hope, and fear keep the cycle of domestic violence in motion. Love for your partner—the relationship has its good points...it's not all bad. Hope that it will change—the relationship didn't begin like this. And fear that threats to kill you or your family will become reality.*
6. Ask participants if they recognize the cycle of domestic violence from their experience as advocates. Ask for one or two examples from participants' experience that demonstrate the cycle of violence, cautioning first that victim names must not be revealed and that no information that might reveal the identity of a victim, either directly or indirectly, should be used. If no one volunteers to describe an experience that demonstrates the cycle of violence, faculty should use one of your own examples.
7. Ask for questions or comments.
8. Read and discuss One Native Woman's Story (see Appendix B-4).

E. Domestic violence—Key concepts

1. State that domestic violence is:
 - A pattern of ongoing abuse, not an isolated event or one-time incident.
 - A pattern of repeated behaviors used by one partner against another designed to control the victim's thoughts, feelings, and actions.
 - Behaviors used by the same perpetrator against the same victim.
2. Acknowledge that victims of domestic violence experience worse injuries and are more likely to be killed when alcohol and/or other drugs are involved.

F. Defining the relationship

1. Ask participants to describe what relationships qualify within the definition of "intimate partners." Suggested wording: *What relationships are covered under the California codes? Must partners be in a long-term marriage? After participants have identified three or four aspects of a qualifying relationship, show slide "Occurs Within a Relationship."*

2. Summarize this slide. Suggested wording:

Domestic violence is violence occurring between intimate partners in a marriage or marriage-like relationship. These are relationships in which the perpetrator and the victim have been in or continue to be married, dating, living together, separated, or divorced. The relationship may be or have been long lasting or short term and the partners may be heterosexual, gay, lesbian, or transsexual.

- G. Note that because domestic violence occurs within an intimate relationship (unlike violence committed between strangers):
- The abuser has ongoing access to the victim.
 - The perpetrator may know intimate details of the victim's life and use these details to keep the victim in the relationship.
 - Abusers have multiple ways of retaliating against their victims, not only with violence, but through economic means and child-related forms of punishment, if children are involved.
- H. Ask if any participant has a question about whether a specific relationship in her experience would qualify under the domestic violence statutes.

III. Reasons Why Some Native American Women Stay and/or Decline to Report Violence

- A. Introduction** suggested wording:

The question "Why does she stay?" used to be asked in a judgmental, blaming way, before we understood as much as we do today about the dynamics of domestic violence. Nothing could be farther from our intention here.

It is important to know the reasons that an Indian woman might stay with a batterer and/or decline to report violence in order to advocate most effectively for her. The reasons are often tied intimately to the experiences of the American Indian victim of domestic violence or sexual abuse discussed earlier, so listening to their experiences makes us more sensitive to a victim's needs and better able to provide appropriate support, information, services, and referrals.

B. Full group discussion

- Ask participants to list the reasons they know or believe an American Indian woman would stay in an abusive relationship and/or decline to report violence. Allow time for as many responses as are volunteered from the group.

- State that you will reinforce what has been said, and add a few reasons that may not have been stated, by showing a series of PowerPoint slides you would like participants to read to themselves. As you show the slides, do not read them, but feel free to comment, embellish, or expand on the content. Give participants time to read each slide before moving to the next). Text follows:
 - Still loves the batterer and hopes he will change;
 - Knows the batterer will find victim if she leaves and fears what batterer will do to her if she attempts escape and is (inevitably) caught;
 - May be physically and emotionally isolated by residing in a rural area;
 - Lack of transportation or financial resources to provide food and housing;
 - Lack of education or marketable job skills;
 - Lack of employment opportunities (often due to racial prejudice) that will provide sufficient income to support victim and her children;
 - Financial dependence on abuser and fear she will be unable to support herself or her children;
 - Fear of being coerced into leaving the home or being removed from the community;
 - Lack of tribal infrastructure or culturally sensitive infrastructure, including shelter that is culturally sensitive and appropriate to the victim's specific needs:
 - Lack of immediate medical care;
 - Lack of facilities to jail or hold perpetrator and/or lack of tribal protection codes;
 - Lack of secure shelter in a confidential location if residing in a rural area;
 - Lack of affordable housing in a safe area near people of her own tribe, or at least near people whose cultural values and experiences are similar;
 - Tribal programs furnish temporary intervention by providing a hotel room for a short stay, often of insufficient duration to allow the victim to access other possible options;
 - Tribal programs may furnish temporary housing, but offer no opportunity for the victim to accurately evaluate options, resources, feelings, or circumstances—thus the potential for continued violence;
 - Inadequate response to victim's needs; lengthy investigations, lack of follow-ups, and/or poor prosecution of cases;
 - It takes too long for a response by county sheriff's department

(because many of California's rancherias/reservation communities are isolated and rurally located);

- Lack of confidence that the criminal complaint will be handled properly;
- California tribal justice systems have limited if any access to detention or correctional facilities, batterers programs, or other effective (but diminishing) sentencing and punishment options;
- Fear the batterer will not be arrested or prosecuted (particularly in a rural area) because the batterer's relatives or friends are law enforcement officers or criminal justice professionals;
- Fear of losing the respect and approval of tribal community—conflicts may pit family and tribal members against each other;
- Fear of, and resistance to, alienation from relatives and tribal community;
- Reluctance to expose one's people, culture, or community to the criticism or ridicule of people of other races who may indulge in victim blaming or stereotyping, or make uninformed, racist comments about Indian people and customs;
- Fear the children will be taken away by the batterer, relatives, county Child Protection Services, or Indian child welfare;
- Fear the children will not become properly connected to their historical traditions, customs, and culture and will grow up without a sense of identity or family;
- Fear of relocating to an area where victim and children will become more emotionally isolated than they may already be;
- Duty of providing care for an elderly relative that may prevent the victim from relocating;
- Obligations to tribal or cultural group that may prevent the victim from relocating;
- Spiritual beliefs or practices and spiritual bonds or ties to a specific location;
- Advice and counsel of elders, spiritual counselor, relatives, friends;
- Heavily invested emotionally in home of family/tribe reservation or rancheria;
- The batterer has received more support and protection than the victim;
- Double jeopardy: feeling of isolation and powerlessness experienced as alienation, both as part of the consequences of acculturation, and as a consequence of circumstances created by the batterer.

IV. Sexual Assault

A. Introduction—Statistics

It is important to convey how much higher the statistics are for Native American women experiencing sexual assault as compared to other ethnic groups.

- Native American women are victims of rape or sexual assault at more than double the rate of other women. Also, more often than in any other race, the offender is non-Native.
- More than one in three Native American women will be raped during their lifetimes.
- Native American women are more likely to be assaulted by intimate partners or family members, and less likely by strangers, than women of other races.
- Among Native American women who are victimized, 75 percent of the intimate victimizations and 25 percent of the family victimizations involved an offender of a different race.

(Source: Steven W. Perry, Bureau of Justice Statistics, *American Indians and Crime: A BJS Statistical Profile, 1992–2002* (NCJ 203097, Dec. 2004).)

- In a 2005 national study, 39% of Native American women surveyed reported some form of intimate partner violence in their lifetimes. This rate is higher than the rate reported by any other race/ethnic group.

(U.S. Centers for Disease Control and Prevention, “Adverse Health Conditions and Health Risk Behaviors Associated with Intimate Partner Violence—United States, 2005,” (February 8, 2008) 57(05) MMWR Weekly; 113–117.)

- In a 2002 California study, researchers interviewed 110 Native American women and found that 80 percent of respondents had experienced a sexual assault in their lifetimes, 26 percent had experienced forced sex in their lifetimes, and 32 percent had experienced either a physical and/or sexual victimization in the past year.

(E. Zahnd, S. Holtby, D. Klein, and C. McCain, National Institute on Alcohol Abuse and Alcoholism and the Office for Research on Women’s Health, *American Indian Women: Preventing Violence and Drinking Project Final Report* (2002) cited in Bachman¹ et al., *supra*, p. 55.)

B. Reasons for silence

1. It is vital to discuss the reasons a Native person may not disclose: cultural barriers, a high level of mistrust for nonnative agencies, fear of family alienation, and a history of inactivity by state and tribal agencies to prosecute crimes committed against them.

¹ Ronet Bachman, et al, *American Indian Women: Preventing Violence and Drinking Project Final Report*, (University of Delaware, Newark, DL, 2002) , *supra*, 55

You will need to mention that sexual abuse is most often thought of as rape or forced sexual acts. Sexual abuse can also include a wide range of behaviors. It may include forced undressing, watching sexual acts, or participating in them. Such abusive behavior may include coercion or forced participation in sexual acts that go against the victim's beliefs or comfort level. Forced or coerced sex when feeling threatened or if sick are also forms of sexual abuse. It is any sexual behavior that is unwanted or interferes with the victim's right to say "no" to sexual advances and it is NOT the result of "uncontrolled passions." Rape is one of the cruelest forms of violence. Regardless of the type of sexual assault, it goes against all tribal beliefs and cultural values.

- It can happen to anyone. Students, working women, girlfriends, wives, mothers, children, aunts, grandmothers, and even males are victims.
- It can occur anywhere and at any time, in public or in your home, day or night.
- It can be committed by strangers but also by acquaintances, neighbors, friends, or relatives.
- Sexual abuse is one of the most underreported crimes. Many times it is recommitting by the same person because it is not reported. It is important to report any kind of sexual abuse to Tribal Police or local law enforcement.

*Tip: You may want to gather additional articles and statistics to illustrate how staggering the differences in sexual assault rates are for Native American and other ethnic groups.

2. Small group discussion

Form small groups to facilitate discussions about:

- a. What constitutes sex assault
- b. Which circumstances could put someone at risk for sexual assault:
 - Women married to domineering men who view them as property
 - Women who are in physically abusive relationships
 - Women who are pregnant
 - Women who are ill or recovering from surgery
 - Women who are separated or divorced
- c. Why American Indian women keep silent about sexual assault:
 - Not believed because she is Indian
 - Drinking at the time of the assault, blaming herself, feeling shame and guilt
 - Distrust of systems, law enforcement, hospitals, courts

- Don't know who to trust with the assault information
- Afraid of retaliation either from the batterer, family, friends, or gang members
- Doesn't consider it rape if committed by husband or boyfriend
- Added stigma of homophobia if raped by another woman
- Fear of retaliation in the form of bad medicine if raped by a spiritual leader
- See assault as "normal"—something that happens to all women
- Feel it was her fault, and that "it" will go away in time
- Believe it was due to personal alcohol or drug use
- Fears others will judge her sexual activities and label her
- Fear of AIDS or sexually transmitted diseases she may have or could get
- Because of mental illness or disabilities

d. Different available services for individuals who have endured sexual assault:

C. Why Native American women seek traditional healing

- Comfort
- Spirituality
- Healing all areas of self— physical, spiritual, emotional, and mental
- Prayers, rituals, ceremonies, stories, and songs that heal and make the women feel comfortable, cleansed, valued, and supported, as though the burden is removed
- Practices traditional ways
- Has built a relationship with a Native spiritual leader
- Heard other Native women's stories of healing

D. Why Native American women use mainstream services

- Only services in the area
- Anonymity
- Does not practice traditional ways
- Bad experience with a past traditional healer
- No confidence in tribal law enforcement or tribal courts
- Her health plan covers it

*Tip: Sometimes during small group discussions that are on challenging topics as this one, an attendee may have emotional reactions to the discussion topics and/or disclose their own experiences. It is helpful to remind the attendees that it is okay to take a break to leave the room if they are having difficulty with the discussion topics.

PART THREE: TRIBAL ADVOCACY [PowerPoint slides 30–35]**Teaching Points:**

- Clear explanation of what an advocate may do for a litigant
- Describe type of advocacy (self-advocacy, individual advocacy, systems or group advocacy, legal advocacy)
- The participants **MUST** understand that a legal advocate is **NOT** an attorney and cannot give legal advice (should I ask for custody, should I get a restraining order, etc.)

I. What Is a Tribal Advocate?**A. Introduction**

Faculty, describe in your own words what it means to be a Tribal Advocate. If possible, include the following concepts:

- Tribal Advocates form trusting and ongoing relationships with victims of domestic violence.
- Tribal Advocates value their litigants as sacred and respect their right to make their own decisions.
- Tribal Advocates must be prepared to help battered women in crisis, thinking first of their safety and the safety of their children.
- Tribal Advocates provide services, information, and referrals, including:
 - 24-hour crisis line
 - Emergency shelter
 - Food
 - Clothing
 - Transportation
 - Accompaniment to court
 - Social services
 - Medical assistance
 - Peer counseling
 - Group counseling (talking or healing circles)

Example:

We must be ready to help when a crises call comes in from a battered woman and we must be prepared to offer information, services, and referrals that, first and foremost, protect her safety and that of her children. These include 24-hour crisis line, emergency shelter, food, clothing, transportation, accompanying her to court, social services, medical assistance, peer counseling, counseling (talking or healing circles).

While we attempt to assist based on our understanding of a battered woman's physical, emotional, and cultural needs, we also respect her absolute sovereignty—an Indian woman's basic right to make her own choices, without interference.

B. Personal qualities and interactions

1. Group discussion. Ask participants to write down two or three personal qualities or practices they believe are most important for effective tribal advocacy. One way to phrase this is to ask: *“From your experience, what are two or three things a Tribal Advocate needs to do or be in order to form close, trusting, and ongoing relationships with their clients? These can be personal qualities, ways you interact, things you do, or attitudes you have found helpful.”*
2. Tell participants that you will give them a few minutes to think and write, then you will ask them to volunteer to share their thoughts with the group.
3. After two or three minutes, or sooner if everyone seems to have finished, ask participants to volunteer their responses. Ask for one or more responses per person, depending upon the size of the group. Responding should be voluntary, not mandatory.
4. You can highlight ideas that have not been mentioned and points that you feel should be reinforced. Alternatively, ask participants to read handout silently. Content appears below and in gender-neutral language in Appendix C.
 - An advocate will become the person who is trusted, the friendly face, listening with an open mind and heart, being there without criticism, believing her story, hearing with understanding and patience.
 - An advocate will be open and honest, never promising anything you can't perform. If in doubt of a solution for a battered woman, let her know you will find an answer and get back to her.
 - An advocate will listen to the battered woman's story without being critical or judgmental. Once trust is established, parts of the story that have not been told to anyone else may be shared with you.
 - An advocate will look for a victim's strengths and acknowledge them.
 - An advocate will focus on needs related to safety for the woman and her children— what the woman desires— helping her to walk through the process.

- An advocate will support a woman's decisions regardless of her situation, even if she decides to return to the batterer. Give her the knowledge and options regarding her choices for herself and her children, discussing ramifications of the options she may choose.

II. Activity: Spider Web

Ask participants to stand in a large circle.

Explain that during this activity each person will have an opportunity to talk. Have them think about someone who helped them when they were going through a hard time in their life. Ask them to think about a quality that this person had: a good listener, positive person, nonjudgmental, etc.

Next, ask them to say their name and one of those qualities, for instance "I am Carol and the quality that I value in someone who helped me was that they were a good listener."

Begin the activity by saying your name and giving an example while holding on to one end of a ball of yarn. Toss the ball to someone across from you in the circle. This process continues until all have either shared or passed and a "spider web" has been created.

Discussion: The spider web is an example of what we can all create if everyone becomes involved in an effort. In this process we are going to begin learning about what way we can create a web of safety for battered women and children in our community. Also, if every other person lets go of the web, what happens to it?

PART FOUR: PROVIDING BASIC SERVICES [PowerPoint slides 35–42]

Teaching Points:

- Clearly describe the different forms of abuse.
- Provide an understanding of safety planning.
- Describe how the information elicited from the client as she is assessing the forms of abuse she endured can provide much information that can be written into the declaration.
- Discuss the ways in which advocates, family support systems, and resources can provide different ways in supporting a child.
- Explain the advocate's role in relation to victim witness services.
- Provide information about victim witness centers, services, and requirements.

- Recommend different ways an advocate can connect and create a relationship with their local victim witness center(s) in an effort to promote positive working relationship between agencies and ease of providing services for the client.

I. Assessing Forms of Abuse

A. Introduction

Suggested wording:

As an advocate, you must gain a strong knowledge of the different types of abuse a client may have endured. In this section we will review the seven types of abuse a person may encounter when seeking services and how the signs may appear different or the same in Native American communities versus non-Indian communities. These seven types of abuse include isolation, financial control, intimidation and threats, emotional abuse, physical abuse, sexual abuse, and use of the children to control or punish the mother.

B. Full group discussion

Discuss the seven types of abuse:

1. Isolation

Isolation behavior on or off the reservation keeps the victim dependent on her partner and alone, without outside support or help. Isolating tactics include keeping the victim from going to a job, school, or church or from seeing family and friends. The perpetrator may remove the telephone while he is away from home, keep the car keys, follow the victim around, open the victim's mail, and monitor cell phone calls. Note that isolation increases the danger to the victim. *Listen to the client's story and ask some of the following questions to assess for isolation.*

- Do you have a support system of friends in the community?
- Does your partner ever pressure you to stop seeing or talking to your friends?
- Does your partner ever forbid you from seeing or talking to certain people in your family?
- Has your partner restricted you in other ways from doing what you want?

2. Financial control

Exercising financial control makes the victim dependent on the partner and extremely vulnerable to abuse. Examples include denying the victim access to money and to information about the family finances, forcing the victim to beg and plead for money, lying about money, stealing the victim's money, preventing the victim from working, and ruining the victim's credit. *Listen to the client's story and*

ask some of the following questions to assess for financial abuse.

- What kinds of arguments do you have over money?
- Who makes the final decision when you disagree with each other?
- If you want to work, does your partner allow it?
- Do you have any money of your own to spend?
- If you or your partner receives money from your tribe or casino do you decide together how it is spent?
- How are finances handled? Who pays the bills? Who controls the checkbook?

3. Intimidation and threats

Intimidation and threats are used to make the victim fear that, if she does not comply, something terrible will happen. The fear can linger for days or weeks, long after an assault is over. Examples of this form of abuse include frightening the victim by certain gestures and looks, smashing things, destroying the victim's possessions, hurting or killing pets, playing with weapons to scare the victim, and threatening to kill the victim, kill the children, or commit suicide. Many people who live in continuously threatening situations adjust and accommodate without realizing the extent to which they are living in fear. These questions are meant to open the discussion. The interviewer may have to probe to determine to what extent the victim is living with fear. *Listen to the client's story and ask some of the following questions to assess for intimidation, fear, or threats.*

- How does your partner let you know that he disapproves of your behavior?
- If you have conflicts or arguments, are there ways that your partner scares you?
- What kinds of threats does your partner make?
- Does your partner ever use physical strength or weapons to intimidate you?
- Has your partner made veiled or open threats to kill or harm you, the children, or himself?
- Are there certain subjects you don't bring up anymore?
- Has your partner intimidated or threatened you in other ways?

4. Emotional abuse

Emotional abuse robs the victim of self-confidence and makes her feel subservient, dependent, devalued, and weak. Examples include putting the victim down, calling her names, humiliating her in front of family and friends, making her feel stupid, and blaming her for what the perpetrator did wrong. *Listen to the client's story and ask some of the following questions to assess emotional abuse.*

- When your partner wants to insult you, what names are you called?
- How often does your partner do this?
- Do you ever feel you just can't do anything right?
- Do you spend a lot of time trying to figure out how not to upset your partner?
- In what other ways does your partner hurt you emotionally?
- Are you put down or criticized?

5. Physical abuse

Physical abuse is aimed at making the victim do what the perpetrator wants. It causes fear or punishes the victim for breaking the perpetrator's rules. Examples include pushing, shoving, hitting with an open hand or closed fist, choking, and burning. *Listen to the client's story and ask some of the following questions to assess for physical abuse.*

- Can you think of a time when your partner pushed or shoved you?
- Can you think of a time when your partner choked you?
- Can you think of a time when your partner grabbed you or prevented you from leaving?
- Can you think of a time when your partner threw something at you or at a wall?
- Can you think of a time when your partner hit you with his hand or fist?
- Has your partner abused you physically in other ways, such as hair pulling or biting?

6. Sexual abuse

Sexual abuse is degrading and humiliating. Many victims feel very uncomfortable talking about sexual abuse. The practitioner must be able to inquire openly about the presence and nature of the abuse. Many women find that over a period of time, a man who is physically and psychologically abusive will frequently be forceful in sexual ways as well. Sexual abuse includes a broad range of behaviors, including pressuring the victim to have sex in a way or at a time she's not comfortable with. It might include things the perpetrator does to make the victim afraid for her own or her children's sense of sexual safety. *Listen to the client's story and ask some of the following questions to assess for sexual abuse.*

- Can you think of a time when your partner made you feel uncomfortable or embarrassed about sex?
- Do you feel pressured to have sex?
- Are there ways your partner gets you to have sex if you don't want to?
- Are there other behaviors of your partner's that make you feel uncomfortable or unsafe sexually?

- Does your partner ever make threats or requirements about reproductive issues, such as refusing to use birth control if that is something that you want?

7. Use of the children to control or punish the mother

Often the man who batters threatens to harm the children as a way to make their mother comply with his demands. Children are also used in a number of other ways (e.g., as spies who are required to report to the father about the mother's whereabouts). Children are sometimes forced to witness or participate in assaults against their mother, and they often hear their father denigrate their mother. Some perpetrators constantly undermine the mother's authority with the children. *Listen to the client's story and ask some of the following questions to assess these issues.*

- Are there ways that your partner tries to use the children against you?
- Does your partner ever threaten that he will harm or snatch the children if you leave?
- Do you ever feel your children must spy on you for their father or must side with their father to punish you?

II. Effects of Domestic Violence on Children

A. Introduction

Suggested wording:

Unfortunately children are victims of domestic violence both intentionally and unintentionally. Sometimes a batterer will use a child to make his partner or spouse feel guilt about leaving a relationship or threaten that if she reports domestic violence, then her child will be removed. Sometimes a batterer may use visitation as a way to harass the partner or spouse. Children may be physically, emotionally, and cognitively damaged as a result of the domestic violence. The nature and extent of the damage will vary depending primarily on three factors:

1. *History of abuse used by the batterer*
2. *Age and gender of the child*
3. *Factors such as family, social, and tribal community support for the child*

B. Full group discussion

Children growing up with domestic violence may experience:

- Depression
- Low self-esteem
- Poor school performance
- Aggressive behavior
- Runaway episodes

- Suicidal/homicidal thoughts
- Precocious sexuality
- Hyper-responsibility/parentified child
- Perfectionism
- Passive behavior
- Stress-related illness
- Attention-seeking behaviors
- Hypervigilance

C. Violence as it affects the community

The most effective way of keeping the children safe is to increase the safety of the nonbattering parent. If a family is hurt by domestic violence, the children are hurt. The health of a community is only as strong as the health of the people in that community. By taking an active role to stop domestic violence in tribal communities and creating safety for children, we can end domestic violence one generation at a time, raising children to be healthy, respectful, and nonviolent.

*Ask participants: What ways have you addressed the effects of domestic violence on children in your tribal communities and/or agencies?

*Recommend that participants read the article, “The Silent Victims: Children and Domestic Violence,” by Nancy Ver Steegh².

III. Safety Planning

A. Introduction

Suggested wording:

One of the most important ways an advocate can assist a client is during the safety planning stage. Violence can increase and can sometimes be lethal during the stage in which an abused individual leaves the home and/or relationship. Therefore, it is vital that assessing the types of abuse and, most importantly, implementing a solid safety plan during this time of transition can truly save lives. A leader in domestic violence education, Jacquelyn C. Campbell, created a danger assessment instrument to help the client and advocate assess the level of danger as best as possible. It is important to note that you cannot entirely predict how violent an abuser may get when the abused person leaves the relationship, but if enough information is gathered

² Ver Steegh, Nancy, The Silent Victims: Children and Domestic Violence. William Mitchell Law Review, Vol. 26, pp. 775-809, 2000; William Mitchell Legal Studies Research Paper No. 45. Available at SSRN: <http://ssrn.com/abstract=910545>

to assess the potential for violence and a safe plan is in place, these preventative measures can make a difference. Please refer to your Danger Assessment and About Safe at Home handouts. (See Appendix D-1.)

B. Full group discussion

Review the Danger Assessment and “About Safe at Home” handouts with the group. You may want to ask if any of the advocates have put a safety plan into place for a client before and for any positive or challenging experiences with safety planning.

1. Introduction

Suggested wording:

We move now to the practical issues and skills involved in our direct interactions with clients. From the time a domestic violence call comes in or a client arrives at our office, we use skills such as communication, interviewing, fact-finding, analysis of facts, assessment danger, and judgment to determine the best and most effective way to keep the client and her children safe. This must be done with sensitivity to our cultural norms and values. It is also to keep in mind that safety planning for a Native American client may be more complex due to location of residence (reservation vs. urban), if tribal court orders exist for the client, and if there is child protective services involvement on a child(ren). Because this is so important, we will practice these skills as we discuss each step, from intake to the point at which a decision must be made about whether to seek a restraining order.

2. Exercise #1: A domestic violence call

a. Read:

At 10 p.m., a woman calls in a muffled, distraught, and hesitant voice. She says: “My husband came home drunk tonight. He hit me a lot and screamed at me real bad. I ran into our bathroom and locked the door to get away from him. I’m afraid he will hurt me again and I don’t want my kids to wake up being scared. I think he might have left the house because it’s quiet, but I can’t tell for sure. What am I supposed to do? I’m scared and I don’t know what to do....”

b. Ask participants to volunteer what they would say to the caller.

c. Ask participants to volunteer what they would say to the caller after each new fact presented below:

- Assailant just left but might come back, especially if he continues to drink.
 - Victim wants to leave but does not know where to go.
 - Victim has a car but assailant took the keys.
 - Victim's sister might help but victim is not sure. Sister lives about 25 miles away.
 - Victim might be willing to go to a shelter but is afraid it will make assailant even more furious.
 - Victim has two children, ages two and eight.
- d. After exploring participants' responses to each new fact above, ask participants to review the Flowchart for Handling Domestic Violence Calls (see Appendix D-3). Go back through the hypotheticals and responses, showing where questions and responses would be different under different facts.
3. Exercise #2: The interview
- a. Set stage. Suggested wording:
- Now assume that _____ has come to your office. You know all the facts discussed already. Also assume that your client spent one night in a shelter and one night at her sister's. Her sister drove her to your office. Her children are with her. We will now focus on ways to establish a trusting rapport with the client, find the facts we need, and provide services to the client based on available options.*
- b. Assessing the forms of abuse
- State that we will probe further into ways that an advocate can gather necessary facts by identifying questions that allow the advocate to assess the nature and extent of abuse and the factors that can increase the victim's vulnerability.
 - Ask participants to discuss their general approach to intake interviews. What are their goals? What general areas will they inquire about? Take voluntary comments from participants until the following points are touched upon (feel free to categorize responses under these headings and add these points, if they are not volunteered):
 - **Listen to client's story**

- Establish trust.
 - Gather facts regarding the nature and extent of abuse, including the effects of abuse on children.
 - Ascertain client's degree of emotional and/or physical injury.
 - Assess the level of assailant's lethality/dangerousness.
 - Discuss various options for protecting client's safety.
 - Analyze facts relative to available options.
- As participants elaborate on the points they raise, if they touch on specific issues raised in the next section—e.g., isolation, financial control, threats and intimidation, use of children to control or punish the mother, emotional abuse, physical abuse, and sexual abuse—note that we will explore these issues further in the next section.
 - State that we will now explore the following areas in more depth by demonstrating *how* we frame and ask questions specifically designed to allow us to assess the nature and extent of abuse (read list):
 - Isolation
 - Financial control
 - Use of children to control or punish mother
 - Threats and intimidation
 - Emotional abuse
 - Physical abuse
 - Sexual abuse
 - As each of the next seven slides is shown, give an overview first (suggested wording below), then ask participants to *demonstrate* what questions they would ask to probe for the relevant information (here, you do not want them to tell you *what* they would ask; you want them to show you *how* they would ask each question—in other words, you want them to simulate/role-play what they would ask). If a question could be rephrased in a number of ways, asked more sensitively, or better preceded by another question, ask for other examples and/or offer your own examples. While communication styles will invariably differ, acknowledge open-ended questions and styles that demonstrate sensitivity and respect. Underscore often that asking a client questions should always happen within the context of listening to her story.
 - **Isolation.** Begin with an overview (suggested wording):

Isolation behavior on or off the reservation keeps the victim dependent on

her partner and alone, without outside support or help. Native victims who are already physically isolated on a rural reservation may not have electricity, transportation, or telephone services. She may be hours from a shelter with no nearby neighbor. She may be dependent on the perpetrator's family for resources. Staying with someone in the community may not be an option, because the perpetrator will know how to find her. The perpetrator may also use isolating tactics such as keeping the victim from going to a job, school, or church or from seeing family and friends. To accomplish this, the perpetrator may remove the telephone while he is away from home, keep the car keys, follow the victim, open the victim's mail, and/or monitor her cell phone calls. Isolation increases the danger to the victim.

Ask participants to demonstrate (simulate/role-play) questions that would explore the degree to which the victim experiences isolation. Add the following, if not volunteered by a participant:

- Where do you live? If on a reservation, is it your reservation or that of your spouse or partner? Is your housing tied to your tribal membership or that of your spouse or partner?
 - Do you have a support system of family and friends in the community? Are you living near your family or that of your spouse or partner?
 - Does your partner ever pressure you to stop seeing your friends?
 - Does your partner ever forbid you from seeing or talking to certain people in your family?
 - Has your partner restricted you in other ways from doing what you want?
 - Do you have cell phone reception where you live? Do you have a working land line if you don't have cell phone reception?
 - Do you live nearby anyone?
- **Financial Control.** Repeat pattern: begin with an overview, ask for demonstrations, supplement. Suggested wording:

Exercising financial control makes the victim dependent on the partner and extremely vulnerable to abuse. Examples include denying the victim access to money and information about the family finances, forcing the victim to beg or plead for money, lying about money, stealing the victim's money, preventing the victim from working, and ruining the victim's credit.

Supplemental questions:

- What kinds of arguments do you have over money?
- Who makes the final decision when you disagree with each other?
- If you want to work, does your partner allow it?
- Do you have any money of your own to spend?
- If you or your partner receives money from your tribe or casino, do you decide together how it is spent?
- How are finances handled? Who pays the bills? Who controls the checkbook?

- **Use of Children to Control or Punish the Mother.** Repeat pattern.

Suggested wording:

Often a man who batters also threatens to harm the children as a way to make their mother comply with his demands. Children may also be used in a number of other ways (e.g., as spies who are required to report to the father about their mother's whereabouts). Children are sometimes forced to witness or participate in assaults against their mother and they often hear their father denigrate their mother. Some perpetrators constantly undermine the mother's authority with the children.

- Supplemental questions:

- Are there ways that your partner tries to use the children against you?
- Does your partner ever threaten that he will harm or snatch the children if you leave?
- Do you ever feel that your children must spy on you for their father or must side with their father to punish you?

- **Threats and Intimidation.** Repeat pattern. Suggested wording:

Threats and intimidation may be used to make the victim fear that if she does not comply with a batterer's demands, something terrible will happen. Her fear can linger for days or weeks, long after an assault is over. Examples of this form of abuse include frightening the victim with certain gestures or looks, smashing things, destroying the victim's possessions, hurting or killing pets, playing with weapons to scare the victim, threatening to kill the victim or the children, and threatening to commit suicide. Many people who are continuously threatened adjust and accommodate to threats without realizing the extent to which they are living

in fear. Questioning the client may open the discussion, but the interviewer may have to probe in order to determine the extent to which the victim is living with fear.

Supplemental questions:

- How does your partner let you know that he disapproves of your behavior?
 - If you have conflicts or arguments, are there ways that your partner scares you?
 - Does your partner ever use physical strength or weapons to intimidate you?
 - Has your partner made veiled or open threats to kill you, the children, or himself?
 - Has your partner threatened to report you to child protective services or threatened that if you disclose abuse that he will make sure your children are removed from you?
 - Are there certain subjects you don't bring up anymore?
 - Has your partner threatened or intimidated you in other ways?
- **Emotional Abuse.** Repeat pattern. Suggested wording:

Emotional abuse robs the victim of self-confidence and makes her feel subservient, dependent, and weak. Examples include putting the victim down, calling her names, humiliating her in front of family and friends, making her feel stupid, and blaming her for the perpetrator's behavior.

Supplemental questions:

- When your partner wants to insult you, what names does he call you?
 - How often does your partner do this?
 - Do you ever feel you just can't do anything right?
 - Do you spend a lot of time trying to figure out how not to upset your partner?
 - Are you put down or criticized?
 - In what other ways does your partner hurt you emotionally?
- **Physical Abuse.** Repeat pattern. Suggested wording:

Physical abuse is aimed at making the victim do what the

perpetrator wants. It causes fear or punishes the victim for breaking the perpetrator's rules. Examples include pushing, shoving, hitting with an open hand or closed fist, choking, and burning.

- Supplemental questions:
 - Can you think of a time when your partner pushed or shoved you?
 - Can you think of a time when your partner choked you?
 - Can you think of a time when your partner grabbed you or prevented you from leaving?
 - Can you think of a time when your partner threw something at you or at a wall?
 - Can you think of a time when your partner hit you with his hand or fist?
 - Has your partner abused you physically in other ways, e.g., hair pulling, biting?

- **Sexual Abuse** Repeat pattern. Suggested wording:

Sexual abuse is degrading and humiliating, and most victims feel very uncomfortable talking about it. However, the practitioner must be able to inquire openly about the presence and nature of sexual abuse. Many women find that over a period of time, a man who is physically and psychologically abusive will often be forceful in sexual ways as well. Sexual abuse includes a broad range of behaviors, including pressuring the victim to have sex at a time or in a way that she does not want. It can also include things the perpetrator does to make the victim afraid for her own or her children's sense of sexual safety.

Supplemental questions:

- Can you think of a time when your partner made you feel uncomfortable or embarrassed about sex?
- Do you feel pressured to have sex?
- Are there ways your partner gets you to have sex when you don't want to?
- Are there other behaviors of your partner's that make you feel uncomfortable or unsafe sexually?

IV. If the Victim Wants to Leave and Has Children

A. Effects of domestic violence on children

1. State that we will now focus on one of the most important intergenerational aspects of domestic violence. How can we break the generational cycle of domestic violence?
2. Begin by discussing the effects of domestic violence on children. Suggested wording:

Unfortunately, children are victims of domestic violence both intentionally and unintentionally. Sometimes a batterer will use a child to make his partner or spouse feel guilt about leaving a relationship or may use visitation as a way to harass his partner or spouse. Children may be physically, emotionally, and/or cognitively damaged as a result. The nature and extent of the damage will vary depending primarily on three factors:

- *History of abuse used by the batterer*
- *Age and gender of the child*
- *Factors such as family, social, and tribal community support for the child*

Children growing up in a violent home suffer abuse in their own families when they become adults. Children learn by observation, so they learn that it is permissible to abuse the people they love. If the child identifies with the abused parent, he or she gets a message that it is alright to be beaten and abused. If the child identifies with the abuser, he or she will act in future intimate relationships the same way the abusive parent acted.

3. Ask participants what they have seen in their advocacy roles or personal lives with regard to children of those in abusive relationships. What might these children experience? After participants have had an opportunity to comment, show slide 38 and go over those points listed below that have not been addressed by participants:

Children growing up with domestic violence may:

- Feel depression
- Have low self esteem
- Have poor school performance
- Demonstrate aggressive behavior

- Have runaway episodes
- Have suicidal/homicidal thoughts
- Be sexually precocious

- Be hyper-responsible
- Exhibit perfectionism
- Be passive
- Have stress-related illness
- Demonstrate attention-seeking behaviors
- Be hypervigilant

4. Ask what questions participants would ask to elicit information about the possible effects of the client's abuse on her children.

5. Summarize. Suggested wording:

The most effective way to keep children safe is to increase the safety of a nonbattering parent. And we must keep children safe if we are to end the generational cycle of domestic violence.

If a family experiences domestic violence, the children will be hurt, and they will be prone to repeat the patterns they observe as children when they become adults. But if we stop domestic violence in tribal communities and create safety for our children, they will grow to be healthy, respectful, nonviolent people.

The health of our entire community is only as strong as the health of its individual members. And no man, woman, or child is healthy if he or she lives with domestic violence. By ending domestic violence, we will strengthen and heal our communities one generation at a time.

B. Exploring options to maximize safety

1. Victim wants to leave and has children

- Ask participants what they ask and/or consider when a victim has custody of her children and wants to leave. Can she take the children? Cover the following points, if not volunteered by participants:
 - Victims of domestic violence may ask "May I take my children with me when I leave?" The answer is "Yes, if you can do it safely. If you can do it safely, you *should* take your children with you." The parent who has physical custody of the children sometimes has an advantage when he or she files for temporary

custody, so it might be more difficult to obtain custody later if you give up physical custody now.

- The victim should get legal custody of the children within a few days. This is very important. Referrals for assistance may be needed.
- The victim should be aware that the batterer may try to kidnap, threaten, or harm the children in order to get spouse/partner to return.
- If the victim is in immediate danger and cannot take the children, the victim should contact law enforcement immediately to arrange for temporary protective custody. (This does not mean that the victim will lose custody. A judge will determine permanent custody later.)

2. Where should victim go?

Suggested wording:

Where should the victim go? Always with the safety of the victim and her children as first priority and with awareness that circumstances will differ based on many factors, here is one approach, from most to least optimal:

- *Stay with family members if it is safe to do so on the reservation or rancheria.*
- *If a woman is the victim, advise her not to stay with a man unless he is a relative. Living with a man she is not married to could hurt her chances for getting custody of the children and spousal support. It could also cause increased conflict with her abuser.*
- *Call the tribal domestic violence program or shelter program, if one is located on the reservation or rancheria, or call a county shelter program for assistance or referrals.*
- *Stay with a friend if it is safe.*
- *Call 911 if necessary.*

Ask participants to give examples from their experience in which other and/or better alternatives were found.

V. Victim/Witness Services

- Ask participants to assume that the client in this scenario is referred to a victim/witness program. Introduce discussion of victim/witness programs by stating:

There are 59 Victim/Witness Assistance Centers in California—one in

each county and one in the City of Los Angeles—that work directly with victims of crime and the Victim Compensation and Government claims Board to assist victims of crime. Under the California Victim Compensation Program, victims of violent crime have the right to receive money for medical expenses, lost wages, relocation, and counseling for themselves and/or their children.

- State that the following are services provided by victim/witness programs. Read information to the audience on slide 40 and quickly read each slide:
 - Emergency services, such as food, shelter, clothes, and relocation
 - Counseling
 - Case status/disposition information, including notification regarding the final disposition of the case and the timing of defendant’s jail or prison release
 - Victim impact statements: Assistance in preparation of victim impact statement and its delivery to the court and deputy district attorney handling the case
 - Explanation of the court process
 - Advocacy (going to court and accompanying victim to court)
 - Transportation to a court appearance
 - Information about restitution (where defendant pays for victim’s losses) or the victims-of-crime compensation claim process
 - Referrals to local agencies that may be able to provide emergency financial help, shelter, or counseling (tribal or nontribal)
 - Information/assistance regarding obtaining a domestic violence temporary restraining order
 - Questions about the victim/witness program
- Ask for comments or questions. Would participants add anything to this list? How do victim/witness programs function in participants’ counties? Are they used by Native women? Are they effective? How do Tribal Advocate organizations coordinate services with those offered by victim/witness programs? Are there examples where improvements in services overall to Native women have occurred through coordinated efforts between or among tribal or county agencies, including victim/witness programs?

VI. Safe at Home Resources

A. Safe at Home

- Ask participants to assume that the client in this scenario ultimately decides to relocate to her sister’s city. She does not want her husband to know where she lives.

- Describe the Safe at Home (SAH) program as follows:
*The Secretary of State's Safe at Home program is a confidential mail-forwarding service. It is **NOT a witness protection program**. It is designed to protect a victim's new home, work, or school address and location from public records and abusers through the use of a substitute address. There are currently 32 states with confidential mail-forwarding programs, several of which include sexual assault victims as participants. California's SAH is the most extensive program in the nation and is a role model for other states.*
 - Ask participants who have had clients who use the SAH program to describe generally how it works.
 - Reinforce participants' descriptions as follows:
 - The Safe at Home program can help keep assailants from learning the location/address of a domestic violence, stalking, or sexual assault survivor's home.
 - Safe at Home provides an official substitute address to use in place of a home address.
 - All first-class mail, legal documents, and certified mail go to the Safe at Home office in Sacramento and are then forwarded to the client within 48 hours. The client's real address remains confidential.
 - Safe at Home participants can also suppress Department of Motor Vehicles (DMV) records, register as confidential voters, and/or apply for a confidential name change.
 - For most participants, Safe at Home's mail-forwarding service is provided at no cost.
 - Participants may apply for Safe at Home services at an enrolling agency, such as a domestic violence shelter, a reproductive health care facility, victim witness programs, and some tribal advocacy programs. The enrolling agency will provide information about the program and assist with the application paperwork.
 - Summarize by stating: *Thousands of people who have had to relocate in California because they are survivors of domestic violence, stalking, or sexual assault have escaped the threat of violence through the Safe at Home program.*
 - Read aloud: *For more information on the Secretary of State's California Safe at Home program, visit www.sos.ca.gov/safeathome or call 877-322-5227. The website and phone number are listed in the [Trainees Guide](#) at page 39.*
- B. Restraining Orders
- Ask participants to assume that a decision is made by the client and her

advocate that a restraining order is needed to maximize her safety and protect her children.

- Ask what issues must be considered at this point. Possible answers:
 - Which court may issue the necessary order(s)?
 - If there is more than one option, what considerations go into making the choice between options?
 - How will this decision impact enforcement?
 - What kind of restraining order would best protect this client?
- State that the following part will address the legal framework for obtaining orders that will maximize the victim's safety. We will come back to our scenario after reviewing available options.

PART FIVE: LEGAL FRAMEWORK [PowerPoint slides 44–54]

I. Overview

Note on Terminology:

In this portion of the curriculum we will be using the following terms:

- *A party or petitioner or person* seeking a restraining order (RO), for the *victim*; and for the *person to be restrained abuser or respondent or responding party* (RP), in the civil context; and
 - *Victim* and *defendant* or *alleged perpetrator* in the criminal context.
- The reason for this choice in terminology is that these are the terms used in court.
- Teaching Points:
 1. Identify types of cases where domestic violence issues are raised.
 2. Be familiar with the differences in these types of cases.
 3. Understand that what happens in one court can affect the case in another court.

A. Overview presentation

Using the PowerPoint slides, present the information below:

The legal system is divided into two distinct parts: the civil system and the criminal system. The table below presents a summary of the differences in the two systems as they are conducted in California.

Civil vs. Criminal System		
	Civil	Criminal
Purpose of the Action	To resolve disputes between individuals and	To punish acts that are disruptive of social order and

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	to compensate for injuries. In juvenile cases, to protect and act in the best interests of the child, and to preserve and strengthen the child's family ties whenever possible, removing the child from parental custody only when necessary for his or her welfare.	to deter similar acts.	
Burden of Proof Required	"Greater weight of evidence": It must be shown to be more likely than not that the act in question occurred.	"Beyond a reasonable doubt": This is a higher standard of evidence than in a civil case.	
Remedies or Penalties	Remedies: Money damages or injunctive relief, ordering a person to be restrained to do or refrain from doing something.	Penalties: Incarceration, fines, restitution, probation during which certain conduct may be required or prohibited by a prosecuting attorney.	
Attorney Representation	Parties pay for their own attorneys or represent themselves. The state does not generally pay for attorneys. However, in juvenile cases, the court appoints an attorney for each parent and each child. And in family cases, in certain limited circumstances, the court appoints an attorney to represent a child.	The victim does not have a lawyer; she is a witness. Prosecutor represents the state. The defendant retains a private attorney or, if defendant cannot afford to hire an attorney, a public defender will be appointed. Alternatively, the defendant may represent himself.	
Trial by Judge or Jury	Family law and juvenile trials are adjudicated only by a judge; there are no juries. Other civil matters,	Criminal trials may be adjudicated by a judge or a jury. Defendants may decide to "take a plea" and avoid a trial. Depending on the type of plea, the	

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	like personal injury and other matters, may be adjudicated by a judge or a jury. Many civil matters are settled through mediation between the parties.	defendant may or may not admit guilt.	
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Faculty to highlight information presented below using PowerPoint slides.

- **The Civil System**
 In the civil system, one person brings an action against another person. Actions are brought for damages, usually money, or for injunctive relief (an order that requires someone to do something or refrain from doing something). A restraining order is a type of injunctive relief.
- **The Criminal System**
 In the criminal system the party bringing the action is the State of California. The person charged with committing the crime is the defendant. The defendant has the right to legal counsel. The victim does not have an appointed attorney. As a witness for the State, he or she is not a client. Therefore, the attorney-client privilege does not apply and the victim must be aware that his or her statements to the prosecutor can be used against him or her in the current or in another action.

In the criminal process, the role of the victim is that of a witness. The testimony or words of the victim, as well as his or her physical injuries, are evidence in the case. The prosecutor, and not the victim, makes the decision to initiate or dismiss a criminal proceeding. The legislature has given victims the right to be notified of the status of criminal proceedings and to have a certain amount of input into the proceedings. However the victim has much less input into criminal proceedings than into civil proceedings. In a civil proceeding, the person seeking an RO is a party to the lawsuit and therefore has more control over what happens in the case.

Advocates can be of great assistance in the criminal system. The advocate will need to support the victim/client in his or her involvement with the criminal process, and help him or her get information and interact with the police, other law enforcement personnel, the prosecuting attorney, and defense counsel. The advocate helps the client present his or her needs to the prosecuting and defense attorneys, the court, probation, and other justice system entities.

- **Multiple Proceedings**

There can be more than one legal proceeding involving the same set of circumstances. These proceedings can be initiated by the person seeking an RO, by the person to be restrained, or by the State.

- Family court (dissolution, custody, visitation, support)
After an incident of abuse, a person may seek an RO by initiating a case in family court under Family Code section 6200 et seq. At the same time, he or she may file an action for dissolution of marriage. Spousal support, child custody and visitation, and child support may be claimed in either an RO or other family law action. She also may start a suit for money damages. After an incident of abuse, the person to be restrained may also start an action to obtain an RO.
- Juvenile court
The State may also file a child protective action in juvenile court in a case where the child was abused or neglected.
- Criminal court
The State may also file a criminal complaint against the defendant. Thus, it is not uncommon that there may be two or more legal proceedings occurring at the same time.

Where there is more than one proceeding, each needs to be treated separately. Usually, there are different attorneys involved and different judges hearing each proceeding. Special care needs to be given when there is more than one proceeding so that confusion does not occur and the maximum result can be obtained in each.

B. Familiarity with the differences between these types of cases

Present table exercise—Match Facts to Court (see Appendix E-2a).

1. Take the job aid, mix up the facts for each court, and have participants match each fact with the correct court. After participants make their best guess, distribute the answers in the job aid provided in Appendix E-2b.

Civil or family court

- A person (petitioner) sues another (respondent).
- Is governed by Family Code.
- Petitioner makes the decisions about the case.
- No attorneys are paid for by the court except to represent a child.
- Burden of proof: preponderance of the evidence.

- Makes domestic violence restraining orders (DVRDs) under Family Code section 6200 et seq.
- Makes orders for dissolution and paternity.

Criminal court

- State or City files a case against a defendant, alleging a crime (e.g., spousal abuse, stalking).
- Is governed by Penal Code.
- Victim is a witness.
- Court-appointed or private attorney for defendant.
- Burden of proof: beyond a reasonable doubt.
- Criminal protective orders (CPOs), including protection of witness pending trial and post-trial orders as a condition of defendant's probation.
- Court may sentence a defendant to jail or prison.

Juvenile Court

- County files case for child abuse/neglect against parent(s).
- Is governed by Welfare & Institutions Code (sections 213.5, 304, 362.4)
- Victim (parent) is a party.
- Each parent and child get appointed counsel.
- Can make restraining orders.
- If there is an open juvenile court case, the family court cannot decide child custody.
- Court has power to terminate parental rights.

Distribute Overview of the Legal System— Job Aid, found in Appendix E-2b

- C. Understand that what happens in one court can affect the case in another court.
- If there is a criminal case against an abuser, the family court may (but is not required to) delay making a “permanent” restraining order until the criminal case is finished to avoid any Fifth Amendment concerns.
 - A party in a family law restraining order case may wish to hold off on making a declaration in that case if there is a criminal case against the party.
 - A victim with a CPO may need a DVRO to address issues like custody or property control.
 - An abuser who is arrested for violating a DVRO may face deportation or removal in immigration proceedings.

II. Roles in State Court [PowerPoint slides 12–22]

Teaching Points:

1. Understand the roles of participants in civil, criminal, family, and juvenile cases in order to help navigate the state court system.
2. Understand the responsibilities and limitations of attorneys and advocates in civil, criminal, and juvenile cases. For example, the victim cannot press or drop charges in a criminal case.
3. Understand how to request an emergency protective order through law enforcement.
4. Understand how to enforce family court orders, protective order including payment of medical expenses, property damages, or lost wages.
5. Understand how the criminal court enforces sentencing/probation terms.
6. Become familiar with victim witness services in the county so that you can advocate for these services.

A. Introduction

Advocates are partners in the work of helping victims to be safe, holding offenders accountable, and creating social change. First responders such as 911 operators or law enforcement officers want to ensure the safety of the public and the individuals involved.

Prosecutors are working to hold offenders accountable. Judges apply the law to the facts to mete out justice. Social services and child protection workers are working to preserve families. Generally, their underlying desire is to enhance the family environment in such a way that the family can succeed.

Overall, these providers all want what advocates want; to keep victim and their children safe from harm. While advocates and others in the state court system have the common goal of keeping victims and their children safe, each has a different role and means of accomplishing it.

B. Overview of Roles

Small group exercise using the handout in Appendix E-3, Who Am I?

1. Tribal Advocate

Teaching Points:

- To educate the victim on law enforcement procedures
- To listen to the victim with an ear toward what aspects of the alleged perpetrator's behavior is criminal

- To assist the victim in making a police report (if she chooses to make a report), obtain a complete copy of the report, identify any errors or deficiencies in the report, and get any needed corrections made
- To assist the victim in enforcement of protective orders
- To educate the victim on the criminal court process—the role of the prosecutor in pressing charges, prosecuting the case whether the victim chooses to cooperate or not, and giving the victim an opportunity for input during all phases of the criminal justice process, including bail, pleas, sentencing, and parole
- To educate the victim that a public defender representing a defendant in a criminal case will not necessarily represent the person to be restrained in the civil case
- To become familiar with the services provided by the Office of Victim Witness, the facilitator's office, and the self-help office, and to connect the victim to these services, as appropriate

2. Role of Law Enforcement

[Note this section addresses the role of law enforcement generally and does not discuss the interplay between tribal and non-tribal law enforcement. It is important to keep in mind that law enforcement in Indian Country function within a complicated jurisdictional maze, answer to multiple authorities, operate with limited resources, and patrol some of the most desolate areas often without assistance from partner law enforcement agencies. In some jurisdictions, there are effective collaborations among tribal, state and federal law enforcement agencies.]

Teaching Points:

- To educate the victim on law enforcement procedures, monitor the police response, and work to remedy problems if they arise
- To assist the victim in making a police report, if she chooses to make a report, and obtain a copy of the report
- To obtain the alleged perpetrator's criminal record
- To educate the victim on how to seek enforcement of civil and criminal protective orders issued by a state or tribal court

In the context of domestic violence, law enforcement has three critical roles:

(1) to investigate crimes of domestic violence, (2) to preserve evidence for trial, and (3) to enforce valid civil and criminal protective orders.

a. Investigation

Police are principally concerned with the alleged perpetrator's criminal behavior. When a victim is telling his or her story, law enforcement is assessing whether a crime has occurred. An advocate can help the victim identify what aspects of the perpetrator's behavior may be classified as criminal so that when the victim makes a police report, the information is relevant and will provide a foundation for arrest and prosecution.

If the police report is done properly, it can serve as a solid basis for prosecuting the alleged perpetrator. A good police report can also provide authority for the victim's story and can be referred to so that the victim does not have to repeat his or her story multiple times.

b. Preserving Evidence:

Here are some tips to help the victim preserve evidence for arrest, prosecution, and seeking an emergency protective order if it is warranted:

- Initiate report by calling 911 or the police dispatch number, and not the police department's business number. Calls to the police business telephone are usually not taped; 911 calls and calls to police dispatch are both audio taped and summarized in written notes on a computer using the Computer Aided Dispatch (CAD record). Both are preserved as official records. Both the 911 audio tape and CAD record rank high in evidentiary value.
- When the police arrive, explain what happened.
- In California, law enforcement must give victims, free of charge, a copy of the complete police report. (See Family Code section 6228.)
- Copies of the police report may be entered into a pending family or juvenile court case or may be submitted as text for obtaining restraining orders.
- If the victim already has a protective order that the restrained person disobeyed, write down what happened, when, where, and the names of any witnesses.
- If the victim does not have a protective order, note that the officer can contact an on-call judicial officer and issue an emergency protective order if it is warranted (see the California Protective Order Guide in Appendix E-4).
- If the victim is physically hurt, take pictures, go to the doctor, and get copies of medical reports.

c. Enforcement:

The police's job is to enforce valid state or tribal protective orders. (See full

faith and credit clause of the Violence Against Women Act (18 U.S.C. §2265.) Police verify the order through the California Law Enforcement Telecommunications System (CLETS), a computer system that lets police all over the state find out about protective orders.

The victim should show the police a copy of the orders. If the restrained person is there and has not been served, the officer can serve the orders. If the officer does serve the order, then it is important that the officer complete Proof of Service (*in person*) (form DV-200; www.courts.ca.gov/dv200.pdf) and then file it at the court. Many agencies use their own proof of service form; ask how it will be sent to the court.

Tip on Tribal Protective Orders. Advocates should confirm that tribal court orders are registered in a state court because otherwise they may not be in CLETS. To register a tribal court order with a state court, use form DV-600 (www.courts.ca.gov/dv600.pdf).

Tips on Enforcement. Advocates should help victims get copies of the restraining order. The court clerk will give up to three copies and proof of service to the victim, upon request, who should:

- Keep one copy with him or her at all times.
- Keep another copy in a safe place.
- Give a copy to anyone else protected by the order.
- Take copies to places where the restrained person is ordered not to go (school, work, daycare, etc.).
- Give a copy to the security officers in his/her apartment or office buildings.
- Make sure local police have a copy, too.
- Keep a record of all violations of the terms of the protective orders.
- Keep the record of violations in a secure place.
- Report all violations to law enforcement.

3. District Attorney (DA)

Teaching Points:

- Only the DA can press charges.
- Only the DA can prosecute the case, and the decision is based on the facts in the police report, not whether the victim chooses to cooperate.
- The DA must give the victim an opportunity for input during all phases of the criminal justice process, including bail, pleas, sentencing, and parole.

Only the district attorney (also called the prosecutor or, in Los Angeles and San Francisco, the city attorney) can decide whether to press or drop charges. The victim of a crime can't press or drop charges. The DA's office will either file (press) charges or reject the case based on the facts in the police report. If the DA's office decides to file charges, it will file either a felony charge or a misdemeanor charge. A felony is more serious than a misdemeanor. A person convicted of a felony can go to prison or jail. For a misdemeanor conviction, the maximum sentence is one year in jail.

If the district attorney files charges, the defendant will go to court. The first time the defendant comes to court is called the "arraignment." If the defendant is taken into custody, the arraignment will happen within 48 to 72 hours. If the defendant is not in jail, the arraignment may not happen for several weeks. At the arraignment, a judge will tell the defendant what the charges are and his or her constitutional rights. The judge will also ask if the defendant pleads "guilty," "not guilty," or "no contest." If the defendant pleads guilty or no contest, the judge can sentence him or her immediately. The victim has a right to be present and speak to the judge at this time.

For misdemeanor cases only if the defendant pleads not guilty, the judge will set a date for a pretrial conference. At the pretrial conference, the judge, a DA, and the defendant's lawyer will discuss the case. The victim has the right to be present, but it's not required. If the defendant still pleads "not guilty," the judge will set a court date for trial.

If a defendant charged with a felony pleads not guilty, there will be a preliminary hearing so the judge can decide if the DA has enough evidence to prosecute the case against the defendant. The victim will be asked to testify. The victim has the right to have a support person with him or her during this hearing.

Most domestic violence cases don't go to trial. Often, the defendant pleads guilty or no contest. If the defendant pleads not guilty, there will be a trial and the DA's office must prove guilt "beyond a reasonable doubt." The victim will be asked to testify at the trial. The victim has the right to have a support person with him or her during the trial. The victim's cooperation in the case is very important. But if the victim doesn't cooperate, the DA can still prosecute the abusive person. The court can require (or "subpoena") the victim to come to court. If the victim doesn't testify as ordered, the court may not place him or her in custody. (See Code Civ. Proc. § 1219.)

If the court doesn't issue a subpoena, the victim doesn't have to go to court. The victim doesn't need a lawyer but the victim may talk to or hire a lawyer. The victim has the right to be present in court for any case in which the defendant is involved.

The DA must notify the victim and give the victim an opportunity for input during all phases of the criminal justice process, including bail, pleas, sentencing, and parole. (See California Proposition 9, the Victim's Bill of Rights.)

The DA, upon request of the victim, must give the victim notice of the terms and conditions of release of the accused. The victim has the right to be heard at any postarrest custody decisions. These victim rights are part of the Marsy Rights which are to be provided to each crime victim pursuant to Penal Code Section 679.026.

4. Role of Public Defender (PD)

Teaching Point

- If defendant has a PD in the criminal case, this attorney will not automatically represent the defendant in the civil case.

Anyone charged with a crime has a right to be defended in a court by an attorney. If the defendant cannot afford an attorney, an attorney, also called a public defender, will be appointed to represent the defendant. The PD is a government-paid lawyer appointed in criminal court to defend clients who cannot afford legal representation. The PD does not represent the person to be restrained in the civil case unless the defendant independently hires the attorney to do so.

5. Role of Probation

The probation department makes recommendations to the judge about how to sentence the defendant. Their recommendations may include:

- Prison or jail time
- Programs to help the defendant take responsibility for the violence
- Restricted contact between the defendant and the victim

In all felony cases, and in some misdemeanor cases, the probation department writes a presentence report for the court. The report describes the crime and the defendant's personal history and criminal record. It includes the defendant's statement and the victim's views about the crime. The victim's statement is very important. It may affect the probation officer's recommendations and the judge's orders. The probation officer (PO) may talk to the victim about the injuries and emotional harm caused by the violence. Anyone convicted of a felony can never own or have a firearm.

At the sentencing hearing, the victim has the right to go to court and speak to the judge in person or in writing. The victim can also ask the judge to order the defendant to pay

for expenses or losses caused by the violence.

If a defendant is granted probation for a crime in which the victim is an intimate partner, a child, or related within the second degree of consanguinity or affinity (see Family Code section 6211), the terms of probation shall include:

- Three years probation;
- A criminal protective order to protect the victim from further acts of violence;
- Completion of an approved, one-year batterer intervention program;
- Payment of medical expenses, property damage, or lost wages to the victim; and
- Public service and fines.

If the defendant is put on court probation, the court will monitor the defendant's compliance with the court orders. If the defendant is put on formal probation, a PO will be assigned to supervise the defendant. The PO's job is to provide protection for the victim and to enforce the court order. Victims can speak directly with the PO assigned to the defendant. The victim has the right to be told about any changes in the defendant's probation.

A defendant must go to a one-year batterer intervention program. This program doesn't guarantee the defendant will never be violent or abusive again. The program tries to teach the defendant how to stop the violence. Victims aren't allowed to participate in the program with the defendant. But a victim can ask for information about the program and the defendant's participation.

If the defendant disobeys the conditions of probation, the judge can order jail time and other probation conditions.

6. Role of Parole

When a defendant is released from state prison, she or he will be supervised by a state parole agent. Parole usually lasts three years. However, it varies depending on the crime and the parolee's adjustment to life outside prison. Once released from state prison for a domestic violence offense, the parolee is sometimes:

- Not allowed to live with the victim;
- Not allowed to contact the victim without the parole agent's approval;
- Required to attend a parolee outpatient clinic (for psychiatric or psychological counseling);
- Required to get substance abuse counseling; and/or
- Subject to other restrictions as determined by the parole board.

The parole agent will decide if the parolee can live with or have contact with the victim. The parole agent will consider the victim's safety. The parole agent can also serve a restraining order on a defendant.

If a defendant commits a crime, like domestic violence, while on parole, he or she is in violation of parole. The parole agent will investigate the parole violation. The violation is separate from criminal prosecution for the crime. The defendant can be charged with a parole violation and a separate crime. The agent may ask the victim for:

- The case number of the police report
- A statement
- Names of witnesses and ways to contact them
- Photos of injuries or damaged property

A parole violation can have serious consequences. It depends on the severity of the charge. The consequences can include:

- A return to custody for up to 12 months;
- Increased supervision;
- Continued parole with additional requirements or conditions; or
- Continued parole with no additional restrictions or limitations.

7. The Role of Victim Witness

Teaching Points:

- Be familiar with the local victim/witness services and staff.
- Connect victim to these services.
- Victim/Witness Assistance Center assists with victim claims and compensation.
- Victim/Witness Assistance Center has access to criminal computer databases.

There are 59 Victim Witness Assistance Centers—one in each county and one in the City of Los Angeles—that work directly with the victims of crime and the Victim Compensation and Government Claims Board to assist victims of crime. Victims of violent crimes have the right to get money for medical expenses, lost wages, relocating, and individual counseling, and counseling for children.

The Victim/Witness Assistance Center can help with:

- Emergency services, such as food, shelter, clothes, and relocation
- Counseling
- Restitution

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- Case status/disposition information: Notifying victims of the status and final disposition of the case
- Victim impact statements: Assistance in preparing a victim impact statement and delivering it to the judge and deputy district attorney handling the case
- Assist with an explanation of the court process
- Explaining status of the case or when the defendant may be released from jail or prison
- Advocacy: going to court and providing a support person at court
- Transportation to a court appearance
- Information about restitution (making the defendant pay for losses) or about the Victim Compensation Program claim process
- Referrals to local agencies that may be able to provide emergency financial help, shelter, or counseling assistance, tribal or nontribal
- Temporary restraining order against domestic violence
- Any questions about the victim/witness program

8. Family Law Facilitator

Teaching Points:

- Be familiar with the local family law facilitator in your county and whether the office has funding to help with protective orders.
- Connect the victim to these services, as appropriate.

Each superior court in California has a family law facilitator's office at the courthouse. A family law facilitator is a lawyer with experience in family law who helps parents and children involved in family law cases with child, spousal, and partner support issues. The family law facilitator can help with:

- Establishing parentage; and
- Getting, changing, or enforcing child, spousal, or partner support orders.

The family law facilitator can also:

- Give the victim the court forms s/he needs;
- Help with filling out forms;
- Help figuring out support amounts; and
- Make referrals to the local child support agency, family court services, and other community agencies that help parents and children.

Many courts have provided additional funding so that assistance is available for a wide

array of family law matters, including child custody, visitation, dissolution, and domestic violence. The family law facilitator in your county may be able to help with obtaining a protective order or understanding how the family court works.

The family law facilitator is not the victim's attorney. He or she is an independent lawyer who can help parents or children who do not have their own lawyer. Both parties can get help from the same family law facilitator.

To locate the facilitator's office in your county, see the following link:

www.courts.ca.gov/selfhelp-lowcosthelp.htm.

9. Self Help Centers

Teaching Points:

- Be familiar with the local self-help center in your county.
- Connect the victim to these services, as appropriate.

Each superior court in California has a self-help center at or near the courthouse that helps people who need legal information but do not have lawyers. These court-based centers provide assistance to self-represented litigants in family law as well as in probate matters such as guardianship, conservatorship, and small estates, and other areas of civil litigation including landlord/tenant, civil harassment, consumer issues, and small claims. Some provide assistance with traffic matters and expungement of criminal records.

To locate the self-help office in your county, see the following link:

www.courts.ca.gov/9521.htm.

This California Courts Online Self-Help Center website provides a great deal of information for litigants and advocates able and willing to go online to access it. At this website, you can find basic information about abuse and harassment cases. (See www.courts.ca.gov/selfhelp-abuse.htm.)

Field Trip to Courthouse and Sheriff's Office

The best way to become familiar with the court house and the sheriff's department is to consider making a trip to gather general information. See Appendix E-1, intended to assist the advocate in gathering general and case-specific information.

III. Confidentiality (PowerPoint slides 67–77)

Teaching Points:

1. Understand the difference between the agency’s policy of confidentiality and the legal definition of confidentiality.
2. Know how to comply with your agency’s policy of confidentiality.
3. Understand the limits of this policy given that the court can subpoena the records of the victim and the advocate.
4. Understand that you, as the advocate, and the victim can be compelled to testify in certain circumstances.
5. A privileged relationship protecting the victim’s information is created only if the advocate meets the statutory requirements.
6. An advocate should record information only to the extent that it helps meet the victim’s needs.

Remember:

A victim’s information is not shared outside the agency unless the victim gives the agency written permission to do so.

A. Introduction

It takes a lot of courage for most victims to reach out for help. Many have lost the ability to trust themselves, let alone others. Most are embarrassed and do not want others to know what they have been living with. When there has been physical abuse, threats to harm or kill them, or threats to take the children, they become even more fearful of repercussions if they tell.

Reaching out for help is challenging for victims in large metropolitan communities. It is even more challenging for individuals living in small, rural communities and remote tribal communities where everybody seems to know everyone else’s business.

Being aware of available services and believing that they can *confidentially* disclose to another individual is often the key to their reaching out to help.

B. Teaching: confidentiality, its importance, keeping records

1. Importance of confidentiality
 - State: *“The basic rule on confidentiality for Tribal Advocates is: A client’s information shall not be shared outside the agency unless the client gives the agency permission to do so.”*
 - Ask: *“Why is it important that we not violate this rule?”* Wait up to 10

seconds for a response or two from participants (you may want to count to 10 to yourself in order to avoid answering your own question). Participants should volunteer answers that acknowledge at least two important principles:

- Breach of trust (or faith)
 - Potential threat to safety or life
- Answer your own question if no one responds to it or summarize by stating:

Yes, a violation of the rule ensuring confidentiality is (1) a breach of trust (or faith), and, even worse, (2) a potential threat to the safety, if not the life, of a native woman and her children.

2. Define “confidentiality” as follows (show slide 67):

“Confidentiality” is the assurance that access to information regarding the victim using a Tribal Advocacy (or shelter) program shall be strictly controlled.

3. State the following *verbatim*:

- *Thus, it should be a Tribal Advocate’s intention to hold all communication, observations, and information made between, by, or about clients who are the recipients of Tribal Advocacy (or shelter) assistance as paramount to a client’s safety.*
- *Therefore, all communications, regardless of form, and whether between adults or children, advocates, volunteers, safe-house providers, student interns, or board members, are to be held in trust as confidential.*

4. Discussion: Trust and safety

Ask participants to consider for a moment the importance of trust. Suggested wording:

Consider for a moment the importance of trust. What do we demonstrate by honoring the trust we are given by a woman who has been battered or sexually assaulted?

Possible answers (touch on these if they are not volunteered by participants—feel free to add your own comments):

- Respect
- Wisdom
- Integrity
- Validation of the victim’s experience, struggle, and strength
- Commitment to forming a close, trusting, ongoing relationship

Ask participants to consider the implications of confidentiality in efforts to ensure a battered woman’s safety.

Why is confidentiality so critically important in our efforts to secure the safety of battered women and their children?

While this may be obvious, it bears repeating.

Possible answer (touch on this if it is not volunteered by participants—feel free to elaborate):

A woman’s safety, perhaps her life, may ultimately depend upon the safeguarding of her whereabouts or other aspects of her situation.

Remind participants that violence against native women is a crime and that strict confidentiality policies reflect this reality.

5. Documentation (show title only)

- State that confidentiality clearly extends to both *oral* and *written* communication.
- State that the following guidelines should govern all written documentation; participants can follow along at page 29 of the [Trainees Guide](#) (“fly-in” bullet points as you address each issue):
 - Documents should include minimal information.
 - Information should relate to the violence perpetrated.
 - Description of injuries
 - Statements regarding assault
 - Past history of violence
 - Threats
 - Law enforcement contact (tribal or county sheriff)
 - Court actions

- Show victim all completed forms.
- Secure documents in locked file.
- **No** person can have access.
- Information can be released only for the intended purpose and only with informed consent.

- Example:

Documents should contain minimal information and be related to the violence perpetrated against the victim. Information may include a description of injuries, statements regarding the assault, past history of violence, threats, any law enforcement contact (tribal or county sheriff), and court actions.

Advocates should show the victim any written information after documents, including forms, have been completed.

The information should be secured in a locked file cabinet and NO person, regardless of the relationship, except for agency personnel, should have access.

Any information released should be used only for the purpose intended by the victim authorizing the release, and authorization must be given with informed consent.

6. Informed consent

Define informed consent as follows:

Informed consent means providing all relevant information about the nature and consequences of signing a release of information. This includes advising a victim to consider how the information may be used once released from the Tribal Advocacy (or shelter) program, how it might enhance her safety, and the possibility and/or consequences of the batterer obtaining the information.

Obtain consent in writing:

*Does your agency have an informed consent form?
Is it written in easy-to-understand language?*

C. Teaching: Limits of confidentiality

1. Only with domestic violence counselors working for domestic violence service organizations
2. Not with victim/witness programs working for the prosecution team

You cannot assure the victim that what she tells you will be kept confidential, unless:

1. You are a domestic violence counselor, as defined by California statute; and
2. You work for a “domestic violence victim service organization,” as defined by California statute.

The statutory definition of a domestic violence counselor is one who (see Evid. Code, § 1037.1(a)):

- Is employed by a domestic violence victim service organization (most tribal domestic violence agencies will meet this definition; see below; and
- Has completed 40 hours of mandated training.

The statutory definition of domestic violence victim service organization follows (see Evid. Code § 1037.1(b)):

- Nongovernmental organization
- Provides shelter, programs, or services to victims of domestic violence and their children
- Includes shelters and other programs whose primary mission is to provide services to victims of domestic violence

Victim/witness programs provide comprehensive services to crime victims and witnesses and therefore care covered by this definition. However, in some counties this office is part of the prosecution team, and information provided that is favorable evidence going toward the guilt or punishment phase of a case will not be kept confidential. It must be disclosed to the prosecution for the benefit of the defendant.

D. Discussion;

Ask for questions or comments. Possible discussion topics:

- Is your tribal advocacy program a domestic violence victim service organization under the statute?
- Are you and the other tribal advocates domestic violence counselors under the statute?
- Does your tribal advocacy program have a written confidentiality policy?
- Does the policy cover the basic rule of confidentiality and the statutory limits of confidentiality? Does it cover who can and cannot have access to the victim’s information?

- We are all aware of horrible consequences that have followed from a breach, often unintended, of confidentiality. How do you personally remain vigilant against an inadvertent mistake?
- How does your agency safeguard information told in confidence? Is there a policy of what should and should not be recorded? Who has access to files?
- Do you know if the victim/witness program in your county is part of the prosecution team?

IV. Types of Restraining Orders (PowerPoint slides 78–91)

Teaching Points:

1. Be familiar with the different types of protection orders issued in California.
2. Know what the court can order the person to be restrained not to do.
3. Know what the limits of a protective order are.
4. Know how to access the self-help website for more information.

A. Introduction

A protective or restraining order issued by a California state court can be a tool to enhance safety. Below is a list of the general types of restraining orders that can be issued by the California court. The types of orders are:

- *Emergency Protective Order (EPO)*
- *Domestic Violence Restraining Order—Temporary Restraining Order* (issued in family court);
- *Domestic Violence Restraining Order—Order After Hearing* (issued in family court);
- *Juvenile Restraining Order* (issued in juvenile court);
- *Criminal Protective Order* (including, post conviction stalking protection order; these are issued in criminal court);
- *Other Civil Restraining Orders:*
 - *Workplace Violence Restraining Order* (sought by an employer to protect an employee);
 - *Civil Harassment Restraining Order*
 - *Elder and Dependent Adult Abuse Restraining Order*; and
 - *Private Postsecondary Educational Institution Protective Order.*

Protection orders can order the person to be restrained **not** to do the following:

- Enter your property
- Assault, attack, beat, or wound you
- Threaten to kill or physically harm you

- Remove your children from you if you have legal custody
- Interfere with your place of employment
- Interfere with your efforts to remove your children or personal property
- Contact you by telephone
- Send you mail (including e-mail)
- Purchase or possess a firearm

1. Teaching: What does a protective order do?

The orders are intended to stop the behavior described above. Police can arrest for violations, even if it did not occur in their presence. A violation of a restraining order is a crime, and will trigger the criminal process. The order can help the litigant prove domestic violence to other agencies, such as child protective services, schools, and even employers. And while it can be effective against some abusers, it does have its limits.

2. Teaching: What are the limits of protection orders? (PowerPoint slides)

It's important to discuss the limits of protective orders, that it is a piece of paper—one part of a safety plan, and may not be enforced or prosecuted. (refer to curriculum on safety planning) And to explain that it will not end your marriage or domestic partnership, nor will it establish parentage.

It is common in cases of domestic violence to find the same persons involved in legal actions at the same time in family, juvenile, and/or criminal court, and for each of these courts to issue appropriate protective orders. For this reason, these training materials will focus on the first 5 types of orders.

3. Teaching: Overview of different types of protective orders (see PowerPoint slides)

B. Types of Protective Orders

1. Emergency Protective Orders

An emergency protective order is a protective order issued by a judge in response to a specific request by a California law enforcement officer. It is generally requested at the time of an incident to protect the victim. This order is in effect for five court days up to a maximum of seven calendar days. The responding law enforcement officer can call a judge any time, day or night, and ask for an emergency protection order, which goes into effect immediately. The judge may grant the order by phone. The judge has to find (1) reasonable grounds to believe that an immediate and present danger of domestic violence exists, that a child is in immediate and present danger of abuse or abduction, or that an elder or dependent adult is in immediate and present danger of abuse; and (2) the

EPO is necessary to prevent the occurrence or recurrence of domestic violence, child abuse, child abduction, or abuse of an elder or dependent adult.

The EPO may include personal conduct restraints, exclusion from the family home, and stay away orders (including locations such as school, work, and daycare, in addition to a residence); temporary care and control of a minor child of the parties; temporary care and control of an endangered child or other children in the household; and temporary care and control of a child in danger of abduction.

The EPO may be issued for domestic violence (Fam. Code, §§ 6209–6211), stalking (Code Civ. Proc., § 527.6; unlike domestic violence, stalking does not require that the parties have a relationship, as defined in Family Code Section 6211—see DVRO and stalking below), child abuse or abduction (Welf. & Inst. Code, § 213.5), or stalking or abuse of elders or dependent adults (Fam. Code, § 6240).

Anyone restrained by an EPO is prohibited from purchasing, receiving, or attempting to purchase or receive a firearm or ammunition and must relinquish any firearms in his or her immediate possession or control.

To get an order that lasts longer than an EPO, you must ask the court for a temporary restraining order (TRO).

2. Domestic violence restraining order—Temporary restraining order

A domestic violence prevention TRO is requested by the person seeking to be protected. These orders address “stay aways,” “move outs,” some property and support issues, custody, and visitation. They are generally granted for a limited time, usually three weeks, until the date of the hearing.

There is no charge for a domestic violence restraining order.

3. Domestic violence restraining orders—restraining order after hearing

A restraining order after hearing (ROAH) is requested by the person seeking to be protected. These orders address “stay aways,” “move outs,” some property and support issues, custody and visitation, restitution for lost earnings, out-of-pocket expenses (medical care, temporary housing needed as a direct result of the abuse), batterer treatment programs, and attorneys’ fees and costs.

These two family court restraining orders are the most common form of restraining orders issued throughout California. This web page explains how to ask for a DVRO restraining order:

www.courts.ca.gov/1264.htm.

There are two requirements to be able to obtain these DVROs:

1. A specified relationship between the person seeking the order and the person to be restrained; and 2. Reasonable proof of a past act of abuse, threat of abuse, stalking, sexual assault, or other behavior that can be restricted under Family Code section 6320(d).

The person seeking the order must be (1) a spouse or former spouse of the person to be restrained, (2) a current or former domestic partner of the person to be restrained, (3) a cohabitant or former cohabitant of the person to be restrained, (4) dating or engaged to be married to the person to be restrained, (5) the parent of a minor child in common with the person to be restrained, (6) a child of a party or subject to a paternity action, or (7) any other person related by blood or marriage in the second degree to the person to be restrained (e.g., grandparent, grandchild, sibling, parent, in-law). (Fam. Code, §§ 6211, 297.5(a),(b).)

The DVRO may include personal conduct restraints, stay away orders, and residence exclusion orders. (Fam. Code, §§ 6321, 6340(b).)

Other orders available through DVRO include:

- Custody and visitation
- Child support (Fam. Code, § 6341(a))
- Spousal support - if married or registered domestic partner (Fam. Code, § 6341(c))
- Parent and child counseling (Fam. Code, § 3190(a))
- Protection of pets
- Temporary use, possession, and control of real and/or personal property
- Payment of restitution for lost earnings or out-of-pocket expenses, including medical care and temporary housing incurred as a direct result of the abuse (Fam. Code, § 6342(3)(b))
- Participation in a batterer's treatment program, approved by the local probation department (Fam. Code, § 6343(a))
- Firearms prohibition
- Recording of unlawful communications
- Property control
- Property restraint
- Debt payment
- Attorney's fees
- Tort damages

What if you are working with someone who has multiple protective orders issued by

various courts? Which protective order takes precedence for enforcement?

The order for enforcement is:

1. Emergency protective order
2. Criminal protective order
3. Juvenile court protective order
4. Civil protective order

For more information on enforcement, visit

www.courts.ca.gov/1266.htm.

If the order is violated

A violation of an order is contempt of court. It may also be a criminal violation. If the order is violated, call the tribal police, local police in urban areas, or the local county sheriff's department in rural areas. If the judge finds that the restrained person violated the terms of the order, the restrained person can be fined and/or jailed.

4. Juvenile restraining orders

The juvenile court can issue both temporary restraining orders and restraining orders after hearing as soon as a petition has been filed, during the juvenile court case, and even after the court terminates jurisdiction. (Welf. Inst. Code, §§ 213.5(a) & (d), 304) The juvenile court can issue an order to protect the following people: the child who is the subject of the petition, other children in the household, or a parent, legal guardian, or current caregiver of the child, whether or not the child resides with that person.

These protection orders can order the person to be restrained **not** to do the following:

- Molest, attack, strike, sexually assault, stalk, or batter the child
- Exclude any person from the dwelling where the child lives
- Contact, threaten, or otherwise disturb the peace of the child
- Contact, threaten, molest, attack, strike, sexually assault, stalk, batter, or disturb the peace of any parent, legal guardian, or current caregiver of the child regardless of whether the child resides with that person

5. Criminal protective orders (CPOs)

When a person has been criminally charged with domestic violence, the court may issue a criminal protective order (Pen. Code, § 136.2). The criminal court may issue a CPO at any time throughout the course of the criminal case, until the court's jurisdiction is terminated, including the period of the time the defendant is on probation or parole. The CPO remains in effect for the length of the criminal proceeding (including probation). Issues addressed include contact of all kinds and the safe, peaceful exchange of the minor children. The court may issue this as a "stay-away" order, with no contact or as a

protective order only, which restricts the behavior of the restrained person. Dismissals or modification to these orders may be made only by the criminal court handling the case. These orders take precedence over any other orders, family law or civil, except that an EPO involving the same protected and restrained persons that is more restrictive takes precedence over a CPO. It can become terms of probation for the person to be restrained.

The CPO may include any order issued under Family Code section 6320, which includes personal conduct restraints and stay-away orders.

Since a child may be a witness to the domestic violence, the criminal court can include a “no contact” order between the defendant and the children while allowing the juvenile or family court to modify those orders to allow visitation if it is in the best interests of the children. A CPO rarely includes child custody orders, and the protected person may not be informed if and when a CPO is terminated.

In California, both criminal and civil laws address stalking. According to the criminal laws, a stalker is someone who willfully, maliciously, and repeatedly follows or harasses another (victim) and who makes a credible threat with the intent to place the victim or victim's immediate family in fear for their safety. The victim does not have to prove that the stalker had the intent to carry out the threat. (Pen. Code, § 646.9.)

The criminal penalty for stalking is imprisonment up to a year and/or a fine of up to \$1,000. There are more severe penalties when the stalker pursues the same person in violation of a court restraining order, with a sentencing range of two to four years of imprisonment. Persons convicted of felony stalking also face stricter penalties if they continue to stalk their victim(s).

A victim, family member, or witness may request that the California Department of Corrections, county sheriff, or director of the local department of corrections notify them by phone or mail 15 days before a convicted stalker is released from jail or prison. The victim, family member, or witness must keep these departments notified of their most current mailing address and telephone number. The information relating to persons who receive notice must be kept confidential and not released to the convicted stalker. (Pen. Code, § 646.92.) The court may order a person convicted of felony stalking to register with local law enforcement officials within 14 days of moving to a city and/or county. (Pen. Code, § 646.9)

Victims may also request that the DMV suppress their automobile registration and driver's license records from being released to persons other than court and law enforcement officials, other governmental agencies or specified financial institutions,

insurers and attorneys. (Veh. Code, §§ 1808.21, 1808.22.)

This web page has more information on criminal protective orders:

www.courts.ca.gov/CPO1.pdf.

6. Other civil restraining orders

a. Civil harassment restraining order

A civil harassment restraining order protects one person from another. It is for people who do not have the domestic relationship to qualify for a DVRO or where the conduct does not meet the statutory definition of “abuse” under the Domestic Violence Prevention Act (neighbors, an ex-girlfriend’s new boyfriend, etc.). The civil court can issue orders to protect the plaintiff and the plaintiff’s family or household members who live with the plaintiff. (Code Civ. Proc., § 527.6(c).) Unlike a DVRO, the court cannot issue kick-out orders or support orders for a civil harassment order.

The court can issue the following civil harassment protective orders:

- No contact: Defendant must not contact, molest, harass, attack, telephone, threaten, sexually assault, batter, contact by mail with the intent to harass, stalk, destroy personal property, or disturb the peace of a party or other named family and household members.
- Stay-away order: Defendant must stay away from plaintiff, others listed as protected, plaintiff’s residence, plaintiff’s work, children’s school, and any other persons or places included in the order.

The plaintiff must show that he or she has suffered harassment, which is defined as (Code Civ. Proc., § 527.6(b)):

- Unlawful violence: An assault, battery, or stalking (Pen. Code, § 646.9);
- Credible threat of violence; or
- Knowing and willful behavior that seriously alarms, annoys, or harasses the person (Code Civ. Proc., § 527.6(b)(3)):
 - Behavior that caused substantial emotional distress to the plaintiff and that any reasonable person would have experienced substantial emotional distress
 - A pattern of behavior over a period of time, however short, where the defendant stalks an individual, makes harassing telephone calls to an individual, or sends harassing correspondence to an individual

The court can issue a temporary restraining order (Code Civ. Proc., §527.6(c)), or after

a hearing, the court can issue an injunction. (Code Civ. Proc., § 527.6(d).) The TRO is usually for 15 days but can be for up to 22 days. (Code Civ. Proc., § 527.6(c).) The injunction is for a maximum of three years (Code Civ. Proc., § 527.6(d)), but at anytime within three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction. (Code Civ. Proc., § 527.6(d).)

This web page explains how to ask for a court order to protect against civil harassment: www.courts.ca.gov/1044.htm.

b. Workplace protections against domestic violence and stalking (Code Civ. Proc., § 527.8)

California state law provides employment protections for domestic violence victims who need to take time off from work to handle issues related to domestic violence. A workplace violence restraining order must be requested by an employer on behalf of an employee who needs protection. The court order can last up to three years. The order can also protect certain family or household members of the employee and other employees at the employee's workplace or at other workplaces of the employer. Under California state law your employer must allow you to use your vacation days, personal leave days, or compensatory time so that you can take actions to protect the health or safety of you or your children from domestic violence or sexual assault, by getting a restraining order, for example. Your employer is not allowed to fire you, harass you, or discriminate or retaliate against you (punish you) for taking time off to deal with domestic violence or sexual assault issues against you or your children. This law applies to all companies. If there are more than 25 employees, there are additional things you are allowed to take time off for besides getting a restraining order:

- Seeking medical attention for injuries caused by domestic violence or sexual assault;
- Going to domestic violence shelters or programs, or going to a rape crisis center for services due to domestic violence or sexual assault;
- Getting psychological counseling related to domestic violence or sexual assault; and
- Participating in safety planning and taking other actions to increase safety from domestic violence or sexual assault.

You must give "reasonable advance notice," telling your employer as early as possible if you need a certain day or days off to go to court. It might be a good idea to ask for your time off in writing and to keep a copy of the letter for proof if you decide to bring legal action against the employer for violating the law. If you need to take an "unscheduled absence" (sudden time off because of domestic violence or sexual assault), your employer cannot fire you. You have to give your employer proof you

were absent because of domestic violence or sexual assault.

Examples of what types of proof you can give:

- A police report showing you were a victim of domestic violence or sexual assault.
- A court order protecting or separating you from the abuser or other evidence from the court or prosecuting attorney that you appeared in court.
- Documentation from a medical professional, domestic violence/sexual assault advocate, tribal or nontribal health care provider, or counselor that you were undergoing treatment for physical or mental injuries due to domestic violence or sexual assault.

This web page explains how to ask for a court order to protect against workplace domestic violence or stalking: www.courts.ca.gov/1045.htm.

c. Elder and dependent adult abuse restraining orders

A person (65 or older) or dependent adult who has been abused can get these orders if they have suffered abuse (Welf. & Inst. Code, § 15610.07):

- Physical abuse, neglect, financial abuse, abandonment, isolation, kidnapping, or other things that cause physical harm or pain or mental pain; or
- Denying things or services that someone needs to keep from being hurt or from suffering mental pain.

This web page will help you locate the adult protective services in your county: www.cdss.ca.gov/agedblinddisabled/PG2300.htm.

This web page explains how to ask for a court order to protect an elder or dependent adult: See www.courts.ca.gov/1058.htm.

d. Private postsecondary educational institution protective orders (Code Civ. Proc., § 527.85)

Courts can make orders to protect a student from being subjected to credible threats of violence that could be carried out on the school campus or facility. The procedure is available only for students at private postsecondary institutions.

This web page contains more information on private postsecondary educational institution protective orders: www.courts.ca.gov/sv100info.pdf

B. Exercise: What Type of Protective Order Am I? (Appendix E-5)

For stalking resources:

- The National Center for Victims of Crime, Stalking Resource Center
www.ncvc.org/src/main.aspx
- *Danger Assessment* (Appendix D-1), Jacquelyn C. Campbell, Ph.D., R.N
<http://www.dangerassessment.org/DATools.aspx>
- Violence Against Women Online Resources www.vaw.umn.edu
- Stalking Behavior Profile <http://www.crimevictimservices.org/page/stalking/61>

For cyberstalking resources:

- Working to Halt Online Abuse, www.haltabuse.org
- Wired Safety,
www.wiredsafety.org/index.php?option=com_content&view=category&layout=blog&id=96&Itemid=371
- Cyberangels, www.cyberangels.org
- Women's Issues, 12 Tips to Protect Yourself from Cyberstalking,
<http://womensissues.about.com/od/violenceagainstwomen/a/CyberPrevention.htm>

V. How to Help Get a Domestic Violence Restraining Order (PowerPoint slides 93–101)

Teaching Points (PowerPoint slides):

- Be familiar with the court process, the forms, and how to help the litigant to request a restraining order.
- Learn how to give effective assistance to prepare the declaration.
- Understand the importance of serving the forms correctly.

A. Step-by-step process

1. Getting and Filling out the Right Forms

The county clerk's office in the county where you live can provide the forms. Ask the civil court clerk for a personal protection order packet. This packet provides all of the forms needed for a DVRO.

Completed forms need to be filed at the court house. There is no fee for filing.

To find the courthouse in your county, go to: www.courts.ca.gov/find-my-court.htm
Here are some forms are also available online at www.courts.ca.gov/forms.htm.

Some tips for filling out court forms:

- Use the instruction booklet for line-by-line instructions in filling out and

filing DVPA forms. The booklet will be marked DV-150-Supervised Visitation Order.

- Use a typewriter or write neatly to fill out court forms. There are also computer programs with which to fill out forms online.
- Advise the litigant to keep court papers safe in a special folder and to bring this folder when going to the clerk's office or to a court hearing.
- Ask the clerk if there are any special local rules about the forms needed or about how the forms must be filled out (like paper or ink color), and ask when you have to tell the person to be restrained that you are asking for a restraining order.

2. Filing the completed forms and getting a court date

The forms can be filed either by mail or in person. Most people choose to file in person so that nothing gets lost and they can get their orders as soon as possible. By mail takes a few extra days, and the litigant must send an extra copy and a stamped, self-addressed envelope so the court clerk can mail an official (filed) copy of each form back.

The judge will decide whether or not to make the order by the next business day. Sometimes the judge decides sooner. If the judge grants (gives) the orders requested, he or she will first make “temporary” orders that only last until the court date for the ROAH.

Whether or not the judge signs the temporary order, the clerk will give the litigant a court hearing date, generally about three weeks later. Then the clerk will write down when and where the hearing will be on all of the copies of the court forms. The court clerk will keep the original set of court forms and give the litigants back a photocopied set.

For more information on what to do after completing the forms, see www.courts.ca.gov/dv510info.pdf.

3. Serving the forms/“service of process”

The law requires that the person to be restrained be given formal notice that the litigant has filed for a restraining order. The judge cannot issue a long-term restraining order until the other person has been served a copy of the court papers and has a chance to respond. Forms can be served by anyone over 18 years of age who is not involved in the case, including friends, relatives, county sheriff (free), tribal police, or a process server. Service must usually be completed five days before the hearing, and the *Proof of Service* must be filed at the hearing.

If the court does not have the *Proof of Service* at the hearing, the court can reissue the TRO for three more weeks.

This court form further explains the service process:

www.courts.ca.gov/dv210info.pdf.

4. Respondent's rights

The person to be restrained has the right to file an answer to the restraining order request, explaining his or her side of the story.

5. The Court Hearing

Both sides go to the court hearing and check in with the clerk or bailiff. Both sides should get there early and bring all the forms they gave the court or got from the court.

Here is a checklist of what to bring to the hearing:

- Copies of all the forms, including the *Proof of Service*, form DV-200
- Photos; medical, repair, or other bills; police reports; and other papers important to the case (original and two copies—one for court and one for restrained person)
- Proposed *Restraining Order After Hearing (CLETS)*, form DV-130, and these other forms if they are relevant to the case:
 - *Other Orders*, form DV-170
 - *Child Support Order–Order of Protection*, form DV-160
 - *Child Custody and Visitation Order*, form DV-140
 - *Supervised Visitation Order*, form DV-150

Additional things to bring if the protected person is asking for child support:

- Last three pay stubs;
- Most recent federal and state tax returns; and
- Proof of child care or uninsured health care expenses for the child.

If both sides do come to court, and the protected person fears for his or her safety, it is important to let the clerk or bailiff know so that they can help. After checking in, both sides wait until the case is called.

If the protected person does not go to the hearing, the temporary restraining order will usually end that day and there will not be a restraining order. If the restrained person does not go to the hearing, he or she will have no input in the case and his or her side of the story will not be taken into account. The hearing goes by default, and the court

assumes that the restrained person agrees with the request.

If the restrained person does go to court, the hearing will be contested. He is not required to file a written response. He has a right to one continuance to get an attorney.

At the hearing, which typically lasts 10 to 15 minutes, the judge will decide to continue or cancel the temporary restraining order. If the hearing is continued while a temporary restraining order is in effect, the protected person may submit form DV-125, *Reissue Notice of Court Hearing and Temporary Restraining Order*, to request an extension until the rescheduled hearing. The person to be protected would indicate at item 4 the reason for the continuance.

If the judge decides to extend the temporary order, the “permanent” order, also called the Restraining Order After Hearing (ROAH), may last for up to five years.

If the judge also makes other orders in the restraining order, like child custody or child support orders, these orders will have different end dates and usually will last until the child turns 18 or a judge changes them.

For more information about getting ready for the hearing, see www.courts.ca.gov/dv520info.pdf.

6. After the hearing

Once the judge has signed the ROAH form (form DV-130), all copies should be brought to the clerk's office so they can be stamped and copies returned to both sides.

The protected person may need to serve the restrained person.

- If the restrained person was present at the hearing, DV-130 can be mailed to the restrained person.
- If the restrained person was not at the hearing, temporary orders were granted, and the judge did not change those orders at the hearing, then DV-130 can be mailed to the restrained person.
- If the restrained person was not at the hearing and either the orders on DV-130 differ from the temporary orders or no temporary orders were granted, DV-130 must be personally served on the restrained person.

The protected person is entitled to five free certified copies from the court clerk. The protected person will need one copy of the final court order for each law enforcement agency, the restrained person, the children's school or daycare provider, and others who

will help enforce the court order. The protected person should keep two copies for herself.

If there is any confusion over what the judge ordered, the tribal advocate should ask for a copy of the “minute order,” which is usually available from the court clerk a few days after the hearing. The minute order is what the court clerk writes down as the order the judge made at the hearing. This information can be helpful. One can also buy a copy of the transcript from the court reporter, which will include everything that was said during the hearing. (The transcript can be very expensive, so ask for an estimate before requesting one.)

7. Enforcing the Order

A restraining order issued on form DV-110 or DV-130 is entitled to full faith and credit throughout the United States and all tribal lands. The protected person may call on law enforcement to enforce the order against the restrained person. California law states that any law enforcement officer in California who receives, sees, or verifies the order on a paper copy, on the California Law Enforcement Telecommunications System, or in an National Crime Information Center Protection Order File (federal database) must enforce the order. If a law enforcement officer has probable cause to believe that the restrained person had notice of the order and has disobeyed the order, the officer must arrest the restrained person. (Pen. Code, §§ 836(c)(1), 1370(b).)

At every superior court in California, clerks either (1) upload a digital image of the restraining order and enter data directly in CLETS, or (2) forward the order to a sheriff’s office, sometimes through another branch or court. The order must be transmitted to law enforcement personnel within one business day of issuance of the order. (Fam. Code, § 6380(a).)

For more information on enforcing the court order, see www.courts.ca.gov/dv530info.pdf.

B. Effective Declaration- DV-100 Request for Domestic Violence Restraining Order and DV-101 Description of Abuse

The declaration on forms DV-100 and DV 101 are sworn statements for the person seeking a restraining order. They must be true statements of the facts, facts that the litigant can attest to (describe as a witness in court).

It cannot be overstated how important the declaration is to the judge. It is the most important evidence to the judge. The judge is looking to the declaration and any other evidence in order to make the order. Specifically, the judge is looking to see if the facts meet the legal definition of abuse under Family Code section 6203 and whether the two

people, the person seeking the restraining order and the person to be restrained, have the domestic relationship.

The legal definition of abuse is as follows:

- Intentionally or recklessly to cause or attempt to cause bodily injury or sexual assault
- To place a person in reasonable apprehension of serious bodily injury
- To engage in behavior prohibited by Family Code section 6320: molest, attack, strike threaten, assault, batter, harass, destroy personal property, disturb the peace

The domestic relationship is defined as follows:

- Spouse or ex-spouse
- Cohabitant or former cohabitant (must live together in ‘family-like’ relationship)
- Dating or engagement relationship
- Child in common
- Related by blood, marriage, or adoption to second degree (parents, grandparents, siblings, children)

The judge is looking to the declaration to understand the facts and to decide whether the facts in the declaration meet the legal definition of abuse and domestic relationship.

Not only is the declaration the key for the litigant to get a protective order, but it is often used by the judge at the hearing as an outline. Therefore, the advocate’s role in helping the litigant prepare the declaration is critical.

- Educate the litigant on the legal definition,
- Elicit the facts,
- Identify the relevant facts,
- Help the litigant tell his or her story, using only relevant facts, organizing those facts, and presenting them in an easy-to-read way.

Helping the litigant prepare the declaration requires giving information—explaining the legal process and legal definitions—AND getting information—eliciting the specific descriptions of the abuse.

1. Interviewing

Tribal advocates know the litigants who seek their help, and they have the necessary interview skills. While it may take time and many interviews before the advocate can get to the relevant facts, it can help to keep in mind the following approach: (1) explain what the judge wants to know; (2) describe the goal of the declaration, and (3) refocus the litigant on the legal definitions so that together, the advocate and the litigant can get

to the relevant facts to put in the declaration.

Additional information about the legal process that an advocate may want to cover with the litigant is that a sworn statement can waive Fifth amendment protections and can be used in juvenile court.

2. Declaration contents—elements of a good declaration

When helping the litigant to tell his or her story, be sure the facts are in the litigant's own words and voice. The reasons are twofold: (1) the litigant is more credible if the declaration is in his or her own words, and (2) the litigant must feel comfortable in court telling the facts and testifying to these facts.

However, advocates should not fall into the trap of helping litigants to write down everything verbatim—only the relevant facts. Being specific and detailed, providing dates (actual or approximate, whenever possible), giving a history of the incidences of violence, and breaking down the recent abuse incidents, as well as including information about other cases between the parties or involving the children, will make for a good declaration.

3. Declaration organization

Many judges like the organization of declarations they read that are submitted by the Domestic Abuse Self-Help (DASH) Projects. Therefore, the organization and approach used by DASH is presented here.

The outline for the declaration is:

- Introduction—Facts about the case
- Timeline with descriptions—Reverse chronological order of incidents of abuse, starting with most recent and going back in time
- Summary paragraph—Context/history of abuse
- Requests for other orders—Reason for requested orders, like custody
- Conclusion

In the introduction, the first paragraph should include the names of parties, their relationship, and how the person to be restrained will be referred to in the declaration. Many judges like to have the names of the parties up front in the declaration. The declaration and all references to parties thereafter by initials. This makes it easy for the judge to keep track of the parties.

For example—

My name is Jane Doe and I am married to Respondent, John Doe (RP).

RP stands for responding party or restrained person.

This is also where the facts should describe how the parties' relationship meets the legal definition. So this is where the litigant should include information about when they dated, whether they were married, when they married, when they broke up, whether they live together, when one or the other moved out, whether they have children, the names and ages of any children with the person to be restrained or another person.

This is also a good place, right up front, to put other important facts such as whether the person to be restrained is a minor, or whether he or she is alcoholic and drinks everyday.

After the introduction the litigant should describe fully and in detail the most recent incident of abuse, starting with the date of the incident and then going into what happened and what was said. While the most recent incident may not necessarily be the worst, it is important to start there to show why the restraining order is necessary now. Then in each succeeding paragraph, the advocate can help the litigant tell his or her story going back in time, covering all of the incidents of abuse. If the litigant runs out of room on the form, the advocate can help with the preparation of attachments to describe, using only relevant facts, the incidences of abuse going back over time.

If there has been a long history of abuse, it is helpful to have a summary paragraph that gives the judge this context for the recent incidences of abuse. This paragraph should describe generally any history of abuse going back to the beginning.

If the litigant is asking the court for orders in addition to the restraining order, for example a custody order, then the declaration should tell the judge what order and explain the reasons for the request.

The last paragraph should be a conclusion. For example, "I am asking for this restraining order because I am afraid the RP will be violent against me again."

When working with the litigant to draft the declaration, here are some tips:

- Don't use conclusory words like:
 - He calls me constantly
 - He attacked or harassed me
- Don't use legal language.
- Don't take down verbatim everything the litigant says, only relevant facts.

One final important tip is that the advocate should ask the litigant to review the contents at every step in the writing of it to make sure all the facts contained in the declaration are accurate and in the litigant's voice.

For a helpful tool on writing a declaration, see in Appendix E the handout from the Los Angeles Neighborhood Legal Services Association, How to Write the DV-100 Statement.

VI. How to Respond to a Domestic Violence Restraining Order (PowerPoint slides 110–117)

Teaching Points:

- Know advocate's role in giving information to the Responding Party
- Understand the RP's options
- Understand the purpose of the two parts of the written answer
- Understand the steps RP must take to complete the answer to the restraining order and prove to the court that it was properly served

A. Advocate's role

If the tribal advocacy organization gives assistance to the RP, one of the most helpful things the advocate can do is to give information. But it is important to let the RP know that you cannot give legal advice, nor can you tell the RP what to do—whether or not the RP should go to the hearing or make a written response.

Here is the kind of information that is helpful to the RP:

- Explain that domestic violence is a crime.
- Explain that there may be a criminal case against the RP at this time or in the future. Explain that not following the restraining order can result in arrest, an order to pay a fine or a jail sentence.
- Explain that anything the RP says in court (including the written answer), can be used against the RP in a criminal case.
- Explain that the RP has the right under the Fifth Amendment to the U.S. Constitution not to give any information that could be used against him or her in a criminal case.
- Explain to the RP his or her options.
- Explain to the RP how to complete the *Answer to Temporary Restraining Order*, form DV-120 if the RP chooses this option.
- Explain to the RP how to mail the *Answer to Temporary Restraining Order*, form DV-120 if the protected person's address is not confidential.
- Refer the RP to the Self-Help Center or the family law facilitator in the courthouse for information on how to fill out the Income and Expense Declaration (form FL-150) if the protected person has asked for child or spousal support.

Here are the RP's options:

- Do nothing. The judge may make orders against the RP.
- Go to the hearing and tell the judge you want to use your Fifth Amendment right.
- Go to the hearing and talk to the judge.
- Answer in writing and go to the hearing.

B. The Answer to Temporary Restraining Order—form DV-120

A written answer can have one or two parts:

1. Answer form:

This form has check boxes to show the court whether the RP agrees or disagrees with the orders and whether the RP wants any different orders.

2. Written statement:

If the RP wants the judge to see a written statement, describing his or her side, then the RP writes what he or she wants the judge to know here.

C. Step-by-step process in completing the answer

1. Carefully review with the RP the protected person's paperwork.
 - Look at the *Request for Order* (form DV-100) to see what the protected person wants.
 - Look at the *Temporary Restraining Order* (form DV-110) to see what the judge ordered.
2. Review with the RP the blank *Answer to Temporary Restraining Order* (form DV-120) and explain the options and consequences for choosing each option.
 - If the RP decides to fill out the *Answer to Temporary Restraining Order*, then the RP will need to check the boxes that give the judge his or her answer to the *Request for Order*.
 - If the RP checks the box, "I agree," then the RP is agreeing to a restraining order made against him or her that will be put into the law enforcement database (CLETS). Law enforcement, employers, government agencies, and other people doing a background search may be able to see that there is a restraining order against the RP.
3. Attach a blank lined form for other orders.
 - If the RP wants the judge to make other orders, this is where the RP writes the type of order he or she is requesting and the reasons why.
4. Attach a blank lined form for a written statement describing the RP's side.
 - If the RP wants to write facts for the judge to read, write them on the attached blank lined form.
5. Complete an *Income and Expense Declaration* (form FL-150) if:
 - The RP is asking the protected person to pay his or her costs or attorney

fees.

- The Protected Person has asked for spousal support and/or child support.
6. Mail the *Answer to Temporary Restraining Order* to the protected person before the hearing.
- Look at the *Notice of Court Hearing* (DV-109, page 2) to see if the court wants the RP to mail the *Answer to Temporary Restraining Order* and when it must be mailed.
 - If the protected person used a confidential address, the RP does not mail the *Answer to Temporary Restraining Order* but instead must bring it to the hearing.

D. How to serve the answer by mail

1. Make three copies of all the forms to be filed with the court.
2. Someone who is over 18—not the RP—must do these five things:
 - Put one of the copies in an envelope.
 - Write the protected person’s name on the envelope.
 - Put the envelope in the mail.
 - Fill out and sign the *Proof of Service by Mail* (DV-250).
[This is a form that proves that the RP’s answer was mailed to the protected person by someone other than the RP.]
 - Give the *Proof of Service by Mail* back to you.
3. Make two copies of the filled-out *Proof of Service by Mail*.
4. The RP must go to court to file forms:
 - The *Answer to Temporary Restraining Order*
 - *Income and Expense Declaration* (only if applicable)
 - *Proof of Service by Mail*

The court will file the originals and stamp the RP’s copies for his or her records.
5. The RP should bring copies to the hearing. One is for the RP, and copies are for:
 - The judge
 - The protected person

PART SIX: CLOSING

I. Strengths of Tribal Persons

Within tribal communities, Indian people have values, traditional stories, and lifeways that promote harmony and a sense of belonging. Indian people have strong traditions that include caring for one another and fostering bonds that nurture traditional values for mutual support. Pre-reservation lifestyles required cooperation, trust, and respect

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between individuals.

II. Long History of Creating Positive Social Change

California tribal communities have a long history of creating positive social changes. Understand that ending domestic violence and sexual assault in tribal communities will require time and meaningful effort. We hope participants will use this information to begin or continue a dialogue about domestic violence issues. We hope that it will encourage critical reflection upon the systems that exist in our communities and promote positive changes. Intergenerational commitment to making a positive difference consists of community support, taking action, and promoting social change as needed.

III. Thank You

We hope this information will be helpful in addressing domestic violence in your community by providing information about what domestic violence is and how violence affects victims and communities. It is our hope you will access facts and information that will be shared with others to take action. Tribal communities can continue to create healthy families while working together to end violence for future generations.