

Consultation Question: What has been the experience of tribes related to state or local enforcement of tribal protection orders pursuant to the full faith and credit provision of the Violence Against Women Act?

Consultation Question: What actions would tribes recommend that DOJ take to improve the enforcement of tribal orders and help overcome the specific challenges related to enforcement identified in different jurisdictions? In particular, what kinds of training or technical assistance for tribes or state personnel would be helpful?

Background:

The Violence Against Women Act (VAWA) of 1994 enacted a provision, amended in subsequent reauthorizations of VAWA, which requires that states, tribes, and territories recognize and enforce a protection order issued by another jurisdiction as if it were the order of the enforcing jurisdiction.¹ Often referred to as VAWA's full faith and credit provision, the statute applies to a protection order issued by a state, tribal, or territorial court that has jurisdiction over the parties and matter under the law of that state, tribe, or territory, provided that reasonable notice and an opportunity to be heard were given to the person against whom the order was sought sufficient to protect that person's right to due process. In the case of *ex parte* orders, notice and opportunity to be heard must be provided within the time required by state, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

VAWA defines "protection order" to include any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts, harassment, or sexual violence against, contact or communication with, or physical proximity to another person so long as the order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.² The definition also includes any support, child custody or visitation provisions, orders, remedies, or relief issued as part of the protection order pursuant to state, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.

VAWA's full faith and credit statute also includes certain protections that are of particular importance in relation to the enforcement by state law enforcement of protection orders issued by tribal courts. Any protection order that is consistent with the statutory requirements described above must be enforced, regardless of whether the order has been registered or filed in the enforcing state, tribal, or territorial jurisdiction, even if the law of that jurisdiction requires such registration or filing of protection orders. In addition, for full faith and credit purposes, VAWA

¹ 18 U.S.C. § 2265.

² 18 U.S.C. § 2266(5).



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provides that a tribal court shall have full civil jurisdiction to issue and enforce protection orders involving any person. In addition to the requirements of federal law, states, tribes, and territories may have enabling legislation or enforcement protocols in place to facilitate the enforcement of protection orders from other jurisdictions.

At prior consultations, tribal leaders have testified that law enforcement officers in the state where the tribe is located are not recognizing and enforcing tribal orders as required by law. In some cases, tribal leaders or representatives reported that state or local law enforcement officers are requiring tribal orders to be filed with the state and entered into state databases before they will enforce them. In another example, a tribal leader testified that tribal protection orders are not recognized without a county court number and that obtaining such a number delays enforcement of the order and endangers victims. Tribal leaders also emphasized the need for training of state and local law enforcement and court personnel on the full faith and credit requirements of state and federal law.

OVW is interested in hearing from tribes regarding (1) whether victims are facing challenges related to the enforcement of tribal protection orders that meet the requirements of VAWA, including challenges that are similar to or different from those discussed at prior consultations; and (2) any recommendations they have for ways in which DOJ could help in overcoming these challenges, including what kinds of training or technical assistance for tribes or state personnel would be helpful.



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BACKGROUND

On June 29, 2016, President Obama traveled to Ottawa, Canada for the North American Leaders Summit (NALS) to meet with the President of Mexico and the Canadian Prime Minister to discuss a variety of topics impacting our shared borders. Among the many commitments announced at the NALS was a tri-lateral commitment to address the high levels of violence against indigenous women and girls that exists across North America. This commitment appears in the [White House Fact Sheet on Key Deliverables for the 2016 North American Leaders' Summit](#) under the "security and defense" pillar. All three countries agreed that the high levels of violence endured by indigenous women and girls across the region warrants increased attention and coordination, resulting in the formation of the new North American Working Group on Violence Against Indigenous Women and Girls (the Working Group), which met for the first time on October 14, 2016, in Washington, D.C.

Across Canada, the United States, and Mexico, indigenous women and girls face alarmingly high levels of violence and often lack access to justice, health care, and social services. A [new report](#) from the United States Department of Justice (DOJ), National Institute of Justice (NIJ), which was released in May 2016, found that more than 84% of Alaska Native and American Indian women had experienced some form of violence in their lifetimes. According to the researchers, of those women, 66% experienced psychological violence, 56% experienced sexual violence, 55% experienced physical violence from an intimate partner, and 49% experienced stalking. Despite the grave need for support and protection from this violence, 38% of Alaska Native and American Indian female victims were unable to access legal, medical, and other services. The report also found that, among the women who reported experiencing violence in their lifetimes, 97% of victims experienced violence by a perpetrator who was not American Indian or Alaska Native.

These disturbing statistics underscore the importance of the Special Domestic Violence Criminal Jurisdiction (SDVCJ) provisions in the 2013 Reauthorization of the Violence Against Women Act (VAWA), which recognized tribes' inherent power to exercise special criminal jurisdiction over non-Indian offenders who commit domestic violence, dating violence, or violate certain protection orders. As the data in the NIJ study show, interracial violence is unacceptably common in Indian Country and this provision is needed to hold non-Indian offenders accountable for their crimes.

Regional coordination on the challenges presented by the incidence of this violence across borders comes at a pivotal time. According to reports by the Royal Canadian Mounted Police, indigenous women and girls face greater risks of violence and homicide. In recognition of this situation, the Trudeau government, in partnership with First Nations advocates, has officially launched a National Inquiry into Missing and Murdered Indigenous Women and Girls. Likewise, in Mexico, lethal violence against



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indigenous women and girls is a serious problem. Across Latin America, including in Mexico, it is estimated that indigenous women and girls are disproportionately the victims of feminicidios (gender-motivated killings) according to a report prepared by the United Nations Permanent Forum on Indigenous Issues.

Given the widespread impact of this violence, the governments of Mexico, Canada, and the United States have resolved to work together as part of the Working Group, with the goals of:

- Exchanging knowledge of comprehensive policies, programs and best practices to prevent and respond to violence against indigenous women and girls through increased access to justice and health services, with a human rights and multicultural approach;
- Enhancing cooperation to address violent crimes against indigenous women and girls, including human trafficking, residing on or off their tribal, First Nations, and indigenous lands and across our borders;
- Improving the response of our justice, health, education, and child welfare systems to violence against indigenous women and girls; and
- Strengthening the capacity of our health systems to provide culturally-responsive victim services.

In preparation for the Working Group meeting, the Department sought input from tribal leaders through two listening sessions. These listening sessions were intended to supplement the information received on an annual basis through OVW's Tribal Consultation.

On October 14, 2016, the first meeting of the Working Group brought together more than 50 senior officials from the governments of the United States, Mexico, and Canada. U.S. Attorney General Loretta Lynch and Secretary of the Interior Sally Jewell led the meeting, and were joined by their counterparts from Mexico and Canada, resulting in the first-ever trilateral convening of our continent's three women Attorneys General.

A number of [new initiatives](#) and [deliverables](#) were announced at the meeting, including:

- A roundtable with tribal judges and US Attorneys on Cross-Border Tribal Justice in early 2017;
 - New Indian Health Service uniform clinical care guidelines on identifying and responding to intimate partner violence;
 - A roundtable on Regional Law Enforcement Coordination on Violence Against Indigenous Women and Girls;
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- A convening of Pan-American Health Organization (PAHO) representatives for a knowledge exchange on the health priorities of Indigenous and other ethnic/racial groups in situations of vulnerability living in the Americas;
- The launch of the Strong Hearts Helpline for Alaska Native and American Indian women and girls on January 4, 2017
- A side event on Indigenous Women and Girls at the 2017 World Health Assembly;
- A trilateral commemoration of the 10th anniversary of the United Nations Declaration on the Rights of Indigenous Peoples in May 2017;
- An exchange program, sponsored by the U.S. Department of State's Bureau of Educational and Cultural Affairs, in coordination with the U.S. Embassies in Ottawa and Mexico City, to bring together Indigenous youth leaders from Mexico, Canada, and the United States.

All three countries resolved to support the full participation of Indigenous representatives at the next high-level meeting, which will be hosted by the government of Canada in 2017.

The Department welcomes comments on the issues presented here, as well as on any other issues regarding violence against indigenous women and girls and the work of the Working Group.

QUESTIONS:

- 1. (As applicable) What types of challenges in responding to violence against women and girls in your community are presented by shared borders with Canada/Mexico? For example, do shared borders make it difficult to prevent or respond to trafficking of indigenous women and girls or hinder the enforcement of protection orders?**
 - 2. (As applicable) What type of interactions have your tribal law enforcement and victim services programs had with law enforcement and victim services programs in Canada/Mexico, with regard to domestic violence, sexual assault, stalking, or human trafficking?**
 - 3. Canada has recently officially launched a National Inquiry into Murdered and Missing Indigenous Women and Girls. What has been the experience of your tribe with missing Native women and girls and domestic violence homicides, sexual assault, or trafficking?**
 - 4. As the working group continues to exchange information between the three countries regarding best practices to prevent and respond to violence against indigenous women and girls, what policies, programs and practices do you believe should be highlighted or addressed? Additionally, what barriers, challenges and ongoing needs do you think should be highlighted, as well as recommendations to address those needs?**
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