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Violence Against American Indian and Alaska Native Women Meeting

**VAWA and Representation of American Indian and Alaska Native Survivors of
Domestic Violence -- *Beyond the Protective Order and Criminal Prosecution***

I. INTRODUCTION

The Northwest Justice Project (NJP) is the largest statewide, publicly-funded provider of civil legal services in Washington. NJP's mission is to seek justice for all low-income people in Washington through high quality legal advocacy that strengthens communities and protects human dignity. NJP has a dedicated Native American Unit (NAU), which provides legal assistance and representation to Native Americans, particularly in cases involving Native American youth and in cases implicating a person's political status as a member of a tribe. NJP is committed to supporting and advocating on behalf of American Indian and Alaska Native survivors of domestic violence. The NAU has two attorneys dedicated to working with Native American survivors of domestic violence, sexual assault, stalking, elder abuse, identity theft, and other crimes; other NJP staff attorneys throughout the state also provide legal assistance to Native American survivors in their service areas.

NJP supports Tribes seeking DOJ authorization to prosecute non-Indians for violence against all survivors of domestic violence regardless of gender or relationship to the perpetrator.¹ It is important, however, that for Tribes to be successful in this work, the

¹ A 2004 Department of Justice report estimates these assault rates to be as much as 50% higher than the next most victimized demographic. Steven W. Perry, *American Indians and Crime- A BJS Statistical Profile 1992-2002*, Bureau of Justice Statistics, US Department of Justice, Office of Justice Programs, December 2004. National annual incidence rates and lifetime prevalence rates for physical assaults are also higher for American Indian and Alaska Native women compared to other women. U.S. Department of Justice. *Violence Against American Indian and Alaska Native Women and the Criminal*

funding must be adequate to fully support all aspects of development and implementation of these laws, including culturally sensitive and traditionally appropriate code revision and court staffing.

II. RELATED CIVIL LEGAL MATTERS ARISING OUT OF DOMESTIC VIOLENCE

Survivors face a myriad of issues stemming from crime victimization. While the criminal justice system may provide protection in some circumstances, criminal charges and/or prosecution may not occur immediately, and any number of related legal issues often arise as a result of domestic violence, sexual assault, and other crimes, which the criminal justice system does not address. Survivors are often required to navigate the civil legal system to obtain protective orders to protect themselves and minor children. Assisting Native American and Alaska Native clients in obtaining a protective order also requires the knowledge and ability to represent clients in their respective tribal courts and navigate the intersection of jurisdictional challenges between state and tribal courts in both obtaining and enforcing protective orders.

However, the full panoply of impacts suffered by survivors are seldom completely addressed by issuance of a protection order or even upon obtaining a criminal conviction of the perpetrator. Moreover, there are numerous ancillary impacts of domestic violence on a survivor's life that are unique to American Indians, Alaska Natives and their minor children. Many Tribes do not have the resources to provide legal representation for their members to address the many ancillary legal issues that arise out of domestic violence which may have their own devastating impacts on the lives of survivors. Some limited examples of these ancillary impacts may include:

A. Family Law Matters – Divorce, Establishing Paternity, Custody and Visitation, Child and Spousal Support

Survivors of domestic violence may have to establish a parenting plan or modify an existing parenting plan. If the parties are married, the survivor may have to file for dissolution or legal separation to obtain a parenting plan. An additional impact to Native American and Alaska Native survivors is the ability for a non-Native perpetrator to file for divorce/legal separation and custody in state court, requiring the Tribal member to engage in a potential legal battle regarding the jurisdiction of the proceeding(s).² These jurisdictional disputes

Justice Response: What is known. In a 2008 CDC study, 39% of Native women surveyed identified as victims of intimate partner violence in their lifetime, a rate higher than any other race or ethnicity surveyed. Adverse Health Conditions and Health Risk Behaviors Associated with Intimate Partner Violence, United States, 2005, MMWR February 8, 2008/ 57(05); 113-117. <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5705a1.html>.

² According to the Bureau of Justice Statistics, US Department of Justice, Office of Justice Programs at least 70% of the violent victimizations experienced by American Indians are committed by persons not of the same race—a substantially higher rate of interracial violence than experienced by white or black victims. Greenfeld, Lawrence & Smith, Steven. American Indians and Crime. Bureau of Justice Statistics, US Department of Justice, Office of Justice Programs, February 1999. NCJ 173386. <http://www.bjs.gov/content/pub/pdf/aic.pdf>

can be complicated, costly and many family law attorneys are not comfortable or even willing to practice in Tribal Courts.

B. Housing

Many survivors face immediate risk of eviction and homelessness as a result of violence against them. For example if a survivor resides with a perpetrator in Tribal Housing and the lease is in the perpetrator's name, the survivor may face losing their housing as they may not qualify for their own lease (particularly if they are a member of different Tribe) and may be the party required to leave the home if a protective order is issued. Additionally, landlords may refuse to take the perpetrator off of the lease or survivors may be evicted due to misconduct of the abuser. These factors can require a survivor to move on short notice due to safety issues for the survivor and/or their children.

The trauma of having to find shelter with little or no notice is further exacerbated by the lack of tribal housing. Lack of housing availability is prevalent in Indian Country requiring many Tribes to place Tribal Members on long waitlists.

C. Financial Impacts

A survivor of domestic violence may also experience extreme economic impacts, which may necessitate filing for bankruptcy, or responding to foreclosure notices or debt collection actions. If the debt collection actions are initiated in state court and the Tribal Member resides on her reservation, there may be a necessity to either transfer the matter to the Tribal Court or object to the enforcement of a judgement that was issued by a state court.

A survivor may need to petition to change the distribution of per capita or other Tribal funds received on behalf of a minor child, so that the perpetrator, who may no longer be a primary care provider, does not continue to receive funds on behalf that minor child.

Also, if a Tribal Court issues an order dividing property or debts, a state agency or third party may not recognize the order without registering the order in state court, despite laws mandating recognition of Tribal Court orders. For example, NJP was recently contacted about a situation wherein a Tribal Member who obtained a Tribal Court Order separating the vehicles in a divorce action, but the Washington State Department of Licensing did not recognize the Tribal Court order for purposes of transferring the name of the registered owner on the title of the vehicle at issue. Unfortunately, even if the outcome involves recognition of the Tribal Court Order, that does not address the additional cost and emotional burden placed upon the Tribal Member who was required to navigate an additional jurisdictional hurdle to seek enforcement of an order that may have already been costly in both time, money and emotional resources to obtain.

D. Health Care

During a physical assault, American Indian and Alaska Native women are more likely to be injured than women of all other groups and more of these injuries needed medical care.³ While Native American and Alaska Natives may qualify for Indian Health Services, there may be issues with respect to access to that health care including logistics and proximity as well as the necessity of filing for state medical benefits if they do not have health insurance. If they apply for state benefits and are denied they may need assistance appealing that determination.

III. CONCLUSION

NJP is committed to supporting and providing culturally sensitive and informed advocacy on behalf of American Indian and Alaska Native survivors of domestic violence. NJP recognizes that there are numerous ancillary impacts of domestic violence on a survivor's life that are unique to American Indians, Alaska Natives and their minor children and works with survivors to address those issues. Moreover, these problems often require navigation of the intersection between tribal and state courts and application of tribal, state and federal laws. NJP is committed to promoting continued excellence in advocacy and civil legal services to the Native American and Alaska Native Community, recognizing this work as vital to promoting the safety, psychological well-being and economic self-sufficiency of tribal communities as a whole.

³ U.S. Department of Justice. Violence Against American Indian and Alaska Native Women and the Criminal Justice Response: What is known. 2008:49