



**NTCSA**  
Supporting Our Circle

# **Incorporating Victim-Centered Practices into Tribal Law Enforcement Sexual Assault Protocols**

A Companion Guide to Tribal Law Enforcement Protocol Resource: Sexual Assault (2008)

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A product of the Tribal Law and Policy Institute

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*The information provided in this product does not, and is not intended to, constitute legal advice; instead, all information, content, and materials available are for general informational purposes only.*

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# I. Introduction

The Tribal Law and Policy Institute (TLPI), [www.Home.TLPI.org](http://www.Home.TLPI.org), is a Native American operated non-profit dedicated to providing free publication resources, comprehensive training, and technical assistance for Native nations and tribal justice systems in pursuit of our vision to empower Native communities to create and control their own institutions for the benefit of all community members, now, and for future generations.

TLPI's collaborative partner in creating this resource is the Minnesota Indian Women's Sexual Assault Coalition (MIWSAC), [www.miwsac.org](http://www.miwsac.org). MIWSAC's vision is creating safety and justice through the teachings of our grandmothers, and its mission is: through unity, we will strengthen our voices and build resources to create awareness and eliminate sexual violence against Indian women and children. MIWSAC will vigorously apply our efforts toward influencing social change and reclaim our traditional values that honor the sovereignty of Indian women and children. This resource is created as partners on the [National Tribal Clearinghouse on Sexual Assault](#) (NTCSA), [www.SupportingOurCircle.org](http://www.SupportingOurCircle.org).

## A. Creation of this Resource

The Incorporating Victim-Centered Practices into Tribal Law Enforcement Sexual Assault Protocols: A Companion Guide to Tribal Law Enforcement Protocol Resource: Sexual Assault (2008) (Companion Guide) expands on a host of TLPI resources on addressing sexual assault in Indian country and on Tribal lands.<sup>[1]</sup>

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[1] For more information about Sexual Assault in Indian Country, please see [www.home.tlpi.org/sexual-assault-publications](http://www.home.tlpi.org/sexual-assault-publications).

Some of those protocol development-type resources include:

- *Tribal Court Judges Bench Book: Tribal Judicial Guide for Navigating Sexual Assault Cases* (2011)
- *Tribal Law Enforcement Protocol Resource: Sexual Assault, Guide for Drafting or Revising Tribal Law Enforcement Agency's Protocols Responding to Sexual Assault* (2008)
- *Sexual Assault Response Teams: Resource Guide for the Development of a Sexual Assault Response Team (SART) in Tribal Communities* (2008)
- *Prosecutor Sexual Assault Protocol: Resource Guide for Drafting or Revising Tribal Prosecutor Protocols on Responding to Sexual Assault* (2008)

With this Companion Guide, TLPI hopes that all those looking to draft, enhance, or amend Tribal law enforcement protocols for responding to sexual assault have a useable resource to enable them to incorporate victim-centered approaches. Specifically, this Companion Guide complements information in TLPI's previous publication on Tribal law enforcement sexual assault protocol development, *Tribal Law Enforcement Protocol Resource: Sexual Assault, Guide for Drafting or Revising Tribal Law Enforcement Agency's Protocols Responding to Sexual Assault* (2008) which remains one of the only, if not the only, resource on Tribal law enforcement sexual assault protocol development.

The Companion Guide fills a need in the field of Tribal law enforcement protocol development. Extensive research involved in preparing this resource revealed that there is still a lack of best practices, models, and materials etc. to help craft Tribal law enforcement sexual assault protocols. The International Association of Chiefs of Police (IACP) has created resources that support trauma-informed policing and sexual assault response generally.

Primarily, IACP’s Sexual Assault Response Policy and Training Content Guidelines(International Association of Chiefs of Police Sexual Assault Guidelines) will be relied upon extensively. Information from the content guidelines will appear as **International Association of Chiefs of Police Sexual Assault Guidelines** throughout the document.

## **B. What This Resource Can Do**

This Companion Guide was developed as a reference guide to needed educational information on sexual assault, recent developments regarding Tribal criminal jurisdiction and authority, and considerations to inform the drafting of a victim-centered Tribal law enforcement sexual assault protocol.

A victim-centered approach allows the victim’s wishes, safety, and well-being to take priority. This approach is grounded in the philosophy that the services and protections offered to the victim are complementary, not mandatory, and the victim is the decision maker regarding services and protections needed. Statutes may contain language such as “at the victim’s discretion.” The following is a definition used by the Office for Victims of Crime (OVC) in the context of human trafficking:

*This approach is defined as the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner.*

*A victim-centered approach seeks to minimize retraumatization associated with the criminal justice process by providing the support of victim advocates and service providers, empowering survivors as engaged participants in the process, and providing survivors an opportunity to play a role in seeing their traffickers brought to justice.<sup>[2]</sup>*

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[2] Office for Victims of Crime Training and Technical Assistance Center, Human Trafficking Task Force E-Guide, “Victim-Centered Approach,” accessed April 28, 2025, <https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach>.

This Companion Guide offers victim-centered considerations to guide the drafting of a Tribal law enforcement sexual assault protocol. The Companion Guide is not legal advice and should not take the place of any required law enforcement training or education.

## II. Background and Contemporary Landscape

### A. How Sexual Assault Affects American Indians and Alaska Natives

***“Any work on this topic must acknowledge that the problem of sexual violence is part of a history and continued reality of systemic violence against Indigenous Peoples.”***

– Amnesty International Interview with Yolanda Francisco-Nez, Executive Director, Restoring Ancestral Winds, May 2021

Overall, sexual assault affects Tribal people in the same way it affects all victims of sexual assault. It is violent. It is traumatic. It is devastating, and not just physically. It is life-altering.

What makes things more challenging for American Indian and Alaska Native people is that the pain here is historical, which has resulted in changes to the way Tribal people and Tribal Nations respond to sexual assault. Prior to colonization, sexual assault was virtually nonexistent within Tribal communities due to traditional values and belief systems based in gender equality. Colonization requires violence, violence not just to the land but to people.<sup>[3]</sup>

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[3] “The Colonial Roots of Violence Against Native American Women.” 2023. Columbia University Mailman School of Public Health. March 16, 2023.  
<https://www.publichealth.columbia.edu/news/colonial-roots-violence-against-native-american-women#:~:text=During%20European%20colonization%2C%20however%2C%20violence%20against%20Native,the%20colonial%20strategy%20for%20conquest%20and%20genocide.&text=While%20the%20spread%20of%20European%20diseases%20played,food%20resources%2C%20starvation%20and%20poverty%2C%20all%20contributed.>

The effect of that type of violence reverberates in the bodies of Tribal people.<sup>[4]</sup>

In response to the violence that came with colonization, there has not been support or ability to talk about sexual assault openly and without judgement. For example, in closeknit Tribal communities, victims may be reluctant to report sexual assault crimes because of confidentiality concerns or because they fear retribution from the perpetrator or his family. Additionally, Tribal authority to address sexual assault has been diminished and attacked. This includes federal statutes and case law limiting Tribal criminal jurisdiction over non-Indians, limiting Tribal sentencing authority, creating a jurisdictional maze where multiple sovereigns can possess jurisdiction without impetus to prosecute sexual assault cases, and much more.

As a result of these impacts, it ultimately has become engrained in individuals that you do not talk about sexual assault. In Tribal communities, there is the added pain that the violence enacted against you has historical roots, and those roots have impacted current ways for you to seek healing and justice.

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[4] Rogers-LaVanne, Mary P., Alyssa C. Bader, Alida De Flamingh, Sana Saboowala, Chuck Smythe, Bernadine Atchison, Nathan Moulton, et al. 2023. "Association Between Gene Methylation and Experiences of Historical Trauma in Alaska Native Peoples." *International Journal for Equity in Health* 22 (1). [2] "[Sexual Assault](#)," Office on Violence Against Women, U.S. Department of Justice, Accessed 05/06/2025. And Pember, Mary Annette. 2015. "Trauma May Be Woven Into DNA of Native Americans." USC Center for Health Journalism. May 28, 2015 <https://centerforhealthjournalism.org/our-work/reporting/trauma-may-be-woven-dna-native-americans#:~:text=The%20researchers%20found%20that%20Native,challenges%2C%E2%80%9D%20the%20researchers%20wrote.americans#:~:text=The%20researchers%20found%20that%20Native,challenges%2C%E2%80%9D%20the%20researchers%20wrote>.

Amnesty International identified the following factors which compound the high rates of sexual violence against American Indian and Alaska Native women:<sup>[5]</sup>

- Federal government's steady erosion of Tribal government authority
- Complex jurisdictional maze that Native survivors of sexual violence must navigate when seeking justice
- Chronic under-resourcing of the law enforcement agencies and Indigenous health services
- Inadequate response of justice systems to crimes of sexual violence

### **Amnesty International Reports and Resources:**

- [The Never-Ending Maze: Continued Failure to Protect Indigenous Women from Sexual Violence in the USA \(2022\)](#)
  - [Never-Ending Maze One Pager](#)
- [Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA \(2007\)](#)

### **Other Reports and Resources:**

- Begay, Chrystal and Tinesha Zandamela, Ballard Brief: "[Sexual Assault on Native American Reservations in the US,](#)" Brigham Young University Ballard Center (2018).
- Deer, Sarah. "[Decolonizing Rape Law: A Native Feminist Synthesis of Safety and Sovereignty,](#)" Wicazo Sa Review (2009): 149.
- U.S. Office for Victims of Crime, [Developing and Implementing a Response to Sexual Assault in Tribal Communities: A Summary of Suggestions from the National Roundtable Discussion on Sexual Assault in Indian Country,](#) (2016)

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[5] Amnesty International. IBC. "The Never-Ending Maze: Continued Failure to Protect Indigenous Women From Sexual Violence in the USA." IBC. <https://www.amnestyusa.org/maze/>.

## B. Unique Needs of Sexual Assault Victims

Sexual assault victims' needs can vary from person to person. Criminal justice system professionals from law enforcement to judges and prosecutors should keep a victim-centered and trauma-informed approach throughout their time addressing a report of sexual assault. However, there are some unique needs for sexual assault victims, particularly American Indian and Alaska Native victims.

Researchers from the Urban Institute, a nonprofit research organization, identified the following:

- Tribal jurisdictions may not have access to trained Sexual Assault Nurse Examiners
- Some victims do not seek services due to past experiences with racism
- Cultural barriers prevent some victims from seeking services and using the justice system
- American Indian communities may distrust justice and service systems due to historical trauma and mistreatment<sup>[6]</sup>

Other challenges for Tribal sexual assault victims include:

- Geographic isolation
- Lack of accessible services and resources including transportation, sexual assault medical forensic exams and payment for those exams. Particularly in Alaska Native villages and communities.
- Lack of education or knowledge around sexual assault – what it is, where to seek help
- Lack of cultural competency from nearest service providers and first responders
- Need to protect children/dependents
- May choose to compromise their own needs and safety to protect others

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[6] Raja, Darakshan. 2014. "The Barriers American Indian Women Face in Accessing Sexual Assault Exams and Services." Urban Institute. May 30, 2014. [5] [Amnesty International](https://www.amnestyusa.org/maze/). IBC. "The Never-Ending Maze: Continued Failure to Protect Indigenous Women From Sexual Violence in the USA." IBC. <https://www.amnestyusa.org/maze/>.

- Shame, stigma, and fear of retaliation
  - Some notions of shame and stigma may come from cultural norms
  - Perpetrators may threaten the safety of the victim’s family, children, pets etc.
- Jurisdictional maze which results in lack of offender accountability by any system – federal, state, Tribal
- Distrust of systems due to historical trauma – federal, state, or even Tribal
- Lack of understanding of legal rights and options
  - Victim’s Rights, Victim Compensation Funds

It is important to note that Tribal challenges and the frequency of sexual assaults may vary from Tribe to Tribe, and from Tribes in the lower 48 to Tribes in Alaska. In Alaska, the prevalence of sexual violence is the same as Native women in the lower 48 – higher than any other group.<sup>[7]</sup> The list of challenges above must be expanded to include those experienced by Tribal victims in Alaska:

- Economic barriers (high cost of living in remote communities and limited jobs)
- Extreme weather
- No remote access to other communities
- Lack of access to healthcare

Further exacerbating the Alaska challenges is the fact that 1 in 3 communities lack a law enforcement presence.<sup>[8]</sup> The jurisdictional quagmire for Alaska Tribes is even more complex than in the lower 48 in part because of the U.S. Supreme Court ruling in *Alaska v. Native Village of Venetie*, 522 U.S. 520 (1998) holding that the Alaska Native Claims Settlement Act protections did not reach the level of federal involvement necessary for a finding of Indian country, leaving many

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[7] "[Domestic Violence and Sexual Assault Victims and Survivors](#)," Alaska Native Justice Center, (n.d.) Accessed 06/09/2025.

[8] "[Village Public Safety Officer Program](#)," Association of Village Council Presidents (n.d.) Accessed 06/09/2025.

Tribes without a land base for asserting Tribal jurisdiction. (For lower 48 criminal jurisdiction charts, see Tribal criminal jurisdiction section)

Law enforcement awareness of these unique challenges facing Tribal sexual assault victims can better inform the development of culturally sensitive sexual assault policies and protocol.

## **C. Sexual Assault Definitions**

### ***Working Definition of Sexual Assault***

The Office on Violence Against Women defines sexual assault as: “any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks capacity to consent.”<sup>[9]</sup>

Sexual assault is a violent crime that injures a victim’s body, mind, emotions, and spirit. The devastation caused by the crime of sexual assault affects not only the individual, but also the victim’s family and community. The crime is life-altering.

Sexual assault survivors often experience a profound sense of shame and violation. Family and community members may believe common myths about sexual violence and falsely assign blame to the victim for putting herself<sup>[10]</sup> in a position or a location where the sexual assault occurred. Sexual assault crimes in Tribal communities may go unreported because of a victim’s embarrassment, shame or a lack of confidence in the criminal justice system that most often focuses on the defendant’s rights. There is no “typical” victim of sexual assault.

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[9] “[Sexual Assault](#),” Office on Violence Against Women, U.S. Department of Justice, Accessed 05/06/2025.

[10] Throughout the resource, the pronouns she/her will be use when referring to a victim. This is consistent with the Tribal Law and Policy Institute’s philosophy on gender-based crime and the available data that demonstrates the extremely high rates of violence against American Indian and Alaska Native women.

Sexual assault is often defined as any “non-consensual sexual contact.” “Non-consensual sexual contact” is defined by the laws of each jurisdiction. Many jurisdictions criminalize any non-consensual sexual contact and can include one or more of the following types of conduct whether performed by forcing a victim to commit the act or performed by the perpetrator:

- Contact, touching, or penetration of a victim’s vulva, vagina or buttocks by a penis, finger, mouth, or foreign object.
- Contact, touching, or penetration of a victim’s anus by a penis, finger, mouth, or foreign object.
- Oral contact with a victim’s vulva, vagina, or anus.
- Contact or touching of a victim’s breast by a finger, hand, mouth, or foreign object.

Sexual assault can be accomplished by the use of force, by the threat of force, by coercion, or by fraud (e.g. posing as a medical doctor). It is important to note that a victim is not required to fight or resist her attacker. Under the laws of most jurisdictions, a conviction for sexual assault can be secured if there is sufficient evidence that sexual contact occurred and that the contact was non-consensual.

There is no “typical” victim of sexual assault. No person asks for or deserves to be sexually assaulted. The impact on the victim can be devastating regardless of the type of assault, whether there was penetration. Power and control are the primary motive for sexual assault. Having lost their power, the victim feels powerless and believes that their life will never be the same. This is the reason victims of sexual assault refer to it as a life-altering trauma.

### ***Federal Sexual Assault Laws***

The federal sexual assault laws distinguish between “types” of sexual abuse on the basis of the degree of force or threat of force. The federal laws are gender neutral. It doesn’t matter if the victim is a man or a woman.

Federal law has four main categories of sexual assault: aggravated sexual abuse, sexual abuse, sexual abuse of a minor or ward, and abusive sexual conduct.

U.S.C. Title 18 – Crimes and Criminal Procedure

Chapter 109A Part I - SEXUAL ABUSE

§2241. Aggravated sexual abuse

§2242. Sexual abuse

§2243. Sexual abuse of a minor, a ward, or an individual in Federal custody

§2244. Abusive sexual contact

§2245. Offenses resulting in death

§2246. Definitions for chapter

§2247. Repeat offenders

§2248. Mandatory restitution

### ***State Sexual Assault Laws***

State laws will vary in the way each jurisdiction defines sexual assault.

**The Rape, Abuse & Incest National Network (RAINN)** hosts a State Law Database that allows you to look up state laws around particular sex crimes, <https://apps.rainn.org/policy/>. You can search by topic and select multiple jurisdictions. Topics include mandatory reporting, sex crime definition and penalties, and consent laws. Reviewing state laws regarding sexual assault will be of particular importance to Tribes located within Public Law 280 or Public Law 280-like states.

### ***Tribal Sexual Assault Laws***

Some Tribal sexual assault laws have been modeled after older federal statutes or older state statutes and contain similar requirements of force, but do not contain other options that do not require force. However, Tribes are increasingly redefining sexual assault as a lack of consent. Tribal code examples can be found in TLPI's resource, Guide for Drafting or Revising Victim-Centered Tribal Laws Against Sexual Assault and Stalking (2017) and searching individual Tribe's codes online.

Note, the Violence Against Women Act (VAWA 2022), [25 U.S.C. § 1304\(a\)\(13\)](#) states that Tribes that meet the statutory requirements may prosecute non-Indians for nine categories of conduct, including the category of “sexual violence.” This federal statute partially reverses the 1978 U.S. Supreme Court decision in [Oliphant v. Suquamish](#) 435 U.S. 191 (1978). The court found that Tribes lacked criminal jurisdiction over non-Indians committing crimes in Indian country. To date, over 35 Tribes have implemented VAWA 2022 special Tribal criminal jurisdiction over non-Indians committing any of the nine categories of conduct in Indian country.

If you are interested in learning more about what those Tribes are doing in this area, please check out [www.TribalVAWA.org](http://www.TribalVAWA.org), TLPI’s publication [Tribal Criminal Jurisdiction over Non-Indians: Violence Against Women Act Reauthorization of 2022](#) and consider joining the Intertribal Technical Assistance Working Group (ITWG). ITWG is a voluntary working group of Tribal representatives who may exchange views, information, and advice, peer-to-peer, about how Tribes may best implement VAWA 2022 Special Tribal Criminal Jurisdiction (STCJ). This includes discussions on how to combat [domestic violence](#), [dating violence](#), [sexual violence](#), [obstruction of justice](#), and [assaults against tribal justice personnel](#). The ITWG also addresses the need to recognize [victims’ rights and safety needs](#), and safeguard [defendants’ rights](#).

### **VAWA 2022 Crime of Sexual Violence**

The crime of Sexual Violence in 25 U.S.C. 1304(a)(13):

*The term “sexual violence” means any nonconsensual sex act or contact proscribed by the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs, including in any case in which the victim lacks the capacity to consent to the act.*

## ***A Continuum of Sexual Assault***

To assist law enforcement in developing victim-centered sexual assault policies and a sexual assault response protocol, an understanding that there is a continuum of attitudes, beliefs, and structures that support acts of sexual violence is essential. Included below is an article from Mending the Sacred Hoop, which was informed by training facilitated by Bonnie Clairmont of the Tribal Law and Policy Institute, that describes the importance of understanding the continuum of sexual violence. The article is reproduced below:

### **Understanding the Continuum of Sexual Violence<sup>[1]</sup>**

Sexual assault is not an exclusive act of aggression but should be considered as part of a continuum of attitudes, beliefs, and actions that support sexual violence. It should also be understood that sexual violence is an outgrowth of the larger issue of sexism. In order to have an impact on sexual violence a community must take steps that address smaller issues as they relate to the larger issue. This article focuses on the belief systems that support sexual violence as well as briefly discussing types of sexual violence, in an effort to bring about an understanding of this issue that will ultimately lead to addressing the sexism that promotes it.

Sexual violence is supported by the attitude or viewpoint that women are sex objects, and often takes the form of suggestive looks or actions, sexist comments, and sexual exploitation. All too often our society treats objectification of women as a cultural norm that does no real harm. Men whistling at and calling out to women on the street is tolerated, jokes or rude comments are the daily fare of talk shows and other media venues, and sexually pornographic material proliferates under the guise of freedom of speech and expression.

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[1] Jeremy Nevilles-Sorrell, "[Understanding the Continuum of Sexual Violence](#)," Mending the Sacred Hoop (2012). Based on a presentation by Bonnie Clairmont at a MSH-TA sponsored sexual assault training March 4-6, 2001 in Minneapolis, MN.

All too often, none of this is considered “criminal” but is part of a largely accepted societal attitude towards women.

The level to which our society accepts sexual objectification creates a foundation where this becomes the absolute value of women. This acceptance manifests into a belief that there is little significant purpose for women beyond procreation and gratification, and makes it easier for men to justify invasive of actions and behaviors toward women.

Personal and legal boundaries are pushed when sexual actions are clearly directed toward a particular individual. Verbal harassment, often using slang references to female body parts coupled with derogatory commentary, is used on the street, in relationships, and in the workplace. This includes obscene phone calls, unwanted sexual advances, retaliatory insults for rejected advances, slanting comments with sexual overtones, and relentless flirting. Groping and inappropriate touching are also invasive actions that objectify women and qualify as sexual violence. Groping and inappropriate touching include grabbing and pinching women’s bodies, making unwanted sexual contact whether in private or publicly in front of friends, and include touches that make women feel uncomfortable. Unfortunately, events like these occur often enough that most adults have either experienced or witnessed such incidents.

At this point on the sexual violence continuum, the perpetrator of such actions usually suffers few consequences for his behavior. Most of these consequences are social. He may be ignored, avoided, or chastised by the woman he’s targeted or others that witness the incident, or he may be kicked out of a public place, such as a restaurant or bar. The level of intervention at this point will vary significantly based on the community’s level of acceptance for such behavior.

Society has a stronger response when it comes to more explicit acts of sexual violence. Peeping in windows, exposure, and soliciting sex constitute some of the “minor criminal” violations that communities have implemented to underscore their lack of tolerance for such behaviors. The proliferation of such “minor criminal” violations point us back to a societal belief that women exist for the sexual gratification of men. In essence, society’s objectification of women grants the perpetrators of such acts unspoken permission to invade a woman’s privacy by watching her through the windows of her home, “flashing” her for pleasure, and attempting to manipulate her into sex through prostitution. At the same time, these actions are taken more seriously by society because they are viewed as threatening to the community, and police and court interventions are utilized. However, although the general tolerance level for such behavior is lower, reporting, arresting, and convicting perpetrators of these crimes can be a struggle.

After the “minor criminal” acts mentioned above, the continuum of sexual violence moves on to include more physical violations such as molestation, coerced sex, and statutory rape. These violations include non-consensual contact, including the removal or attempted removal of clothing covering intimate body parts, date rape or forced sex, and taking advantage of younger/teenaged women. Such acts often occur in the context of on-going relationships between acquaintances, dating relationships, and in marriage. Our society supports the unspoken notion that a woman becomes the property of a man in a relationship, and all too often, this idea of women as property can translate into older men staking a claim to younger and younger women (girls). Society’s implicit message that a woman’s worth rests solely on her seeming sexual attractiveness and ability to procreate can be seen in the value that our society places on youth and the media’s tendency to portray young girls as sexual women.

This gives unspoken approval for these acts thus making it difficult for perpetrators to fully understand the harm that they have caused.

Common discussions of sexual assault typically focus on the most extreme acts of sexual violence. Severe aggression, kidnapping, and brutal assault coupled with sexual penetration are what most people envision as the dynamics of sexual violence. Some might believe that the continuum of sexual violence starts with rape then moves up from there to include hitting, restraining, and use of weapons. As this continuum demonstrates this is actually toward the most extreme end of sexual assaults.

The most extreme end of sexual violence involves both sexual and physical violence. This includes women who are beaten and raped over an extended period or throughout a relationship, women who are forced into prostitution, and those who are raped and murdered. This type of violence is what grabs our attention, and this is what we try to protect our communities from, when actually this is the end result of our social attitude toward women. (When we treat women as objects we divest them of their humanity. Objects can be used, misused, and even destroyed without consequence; human beings on the other hand, have basic human rights that must be respected.)

There are many issues to be aware of when dealing with sexual violence. Society's myth that women must fear the stranger in the alley when it comes to rape and sexual assault should be reexamined in light of the fact that women know the perpetrator in 82% of rape and sexual assault cases (BJS Special Report, number NCJ-154348). Many battered women report being sexually assaulted in their relationship with the batterer. In addition, women have experienced sexual abuse by spiritual leaders and traditional healers when seeking ways deal with the trauma of sexual violence.

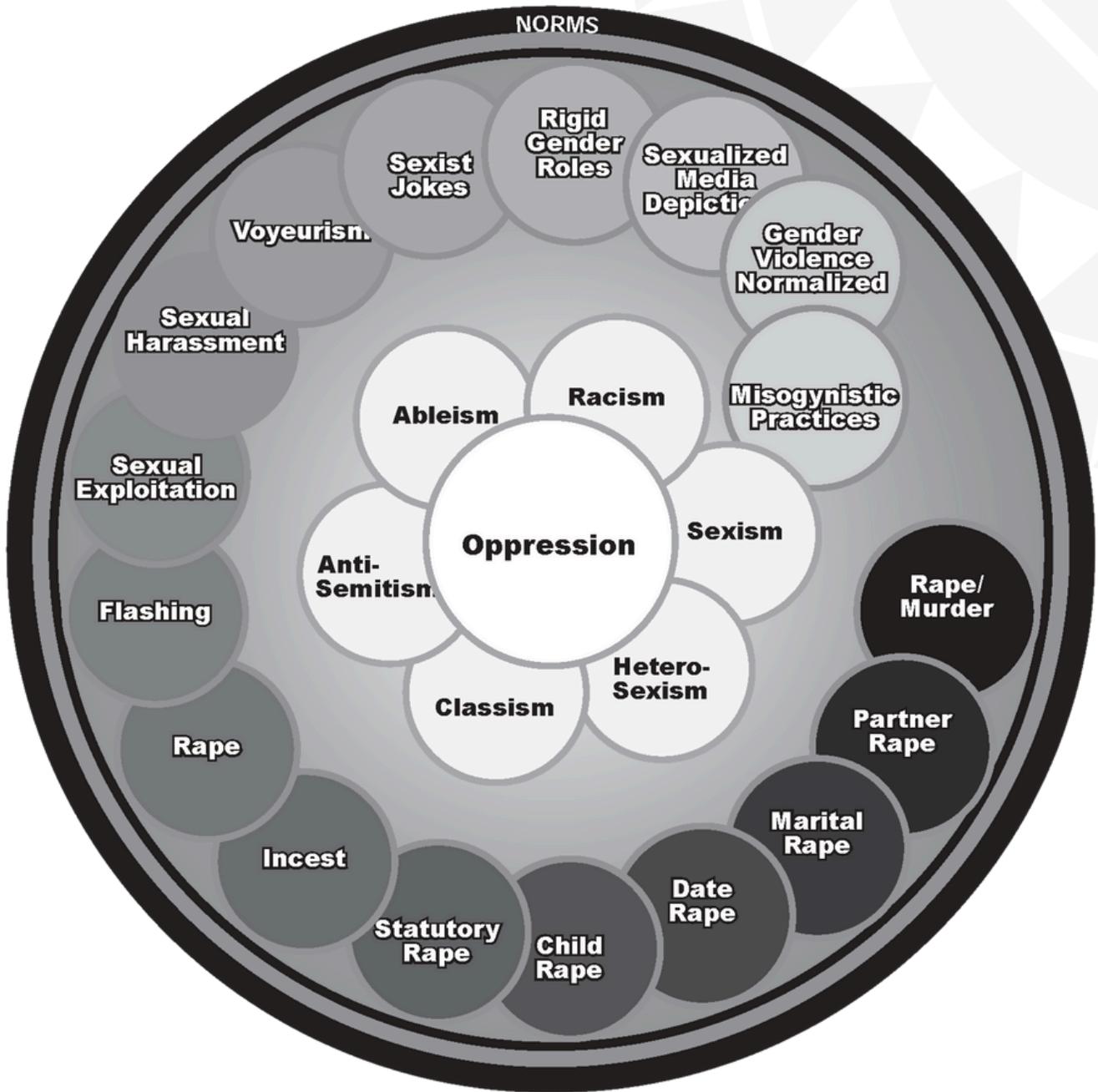
No matter where in the continuum a woman experiences sexual violence, the experience is traumatic and harmful.

Many communities have people and programs available to deal with these issues and there is a growing effort to cover the full extent of the problem. To create lasting change we must address our social attitudes and beliefs in order to effectively address violence against women.

Lastly, a representation of a continuum of sexual violence is included below. This version was created by Lydia Guy (2006). Guy aimed to create a continuum which clearly shows the connection between all forms of oppression and violence. “This version of the sexual violence continuum depicts a range of sexually violating behaviors in overlapping circles as grey circles on a grey background. The background is meant to represent society. The outer ring of the society circle includes the word “Norms”: representing the reinforcing nature of norms. In the center is the word “Oppression,” and overlapping white circles listing six specific forms of oppression. This is meant to convey the idea that all forms of oppression are linked and are often experienced in conjunction with one another.”<sup>[12]</sup>

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[12] Guy, Lydia. “Re-visioning the Sexual Violence Continuum,” Partners in Social Change (2006), Accessed from: <https://www.pcar.org/sites/default/files/resource-pdfs/re-visioning-the-sexual-violence-continuum.pdf>.



## Sexual Violence Continuum

Lydia Guy · WCSAP 2006

[12] Guy, Lydia. "Re-visioning the Sexual Violence Continuum," Partners in Social Change (2006), Accessed from: <https://www.pcar.org/sites/default/files/resource-pdfs/re-visioning-the-sexual-violence-continuum.pdf>.

## **D. Evolutions in Approaches to Addressing Sexual Assault**

Over time, understandings of what sexual assault is, and how different disciplines can address and prevent it have improved. Many misunderstandings and stereotypes about sexual assault – who the victims are, what it involves, what victims need – have been tackled and diminished. However, many core issues still remain. Thankfully, some advancements including understanding the importance of being victim-centered, trauma-informed, and culturally sensitive, and the development and creation of victim’s rights have provided for advancements in addressing sexual assault.

### ***Victim-Centered and Trauma-Informed***

***“Law enforcement personnel, both sworn and professional, respond regularly to individuals who experience traumatic events. This experience positions them to support and treat victims and co-victims with empathy; provide critical information, resources, and support; and empower them and involve them in decision-making. Victim-centered, trauma-informed approaches are vital to victims’ short-term safety and long-term stability. These approaches give law enforcement the necessary tools to prioritize victim’s needs, rights, and well-being.”***

– p. 1, Identifying and Incorporating Core Principles of Victim-Centered and Trauma-Informed Response Practices for Law Enforcement (2024)

Victim-centered and trauma-informed policing have increasingly gained recognition as a promising approaches that result in benefits for victims and law enforcement. A traditional approach to law enforcement has focused on apprehending suspects rather than victim support and wellbeing.<sup>[13]</sup> This move from a traditional approach to policing has paralleled a growing social awareness of long-term effect of trauma for victims of violent crime.

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[13] CNA Talks, Episode 168: Victim Centered Policing, Center of Naval Analyses, (n.d.).

This move from a traditional approach to policing has paralleled a growing social awareness of long-term effect of trauma for victims of violent crime. However, there is still a need for victim-centered and trauma-informed practices and policies to be adopted on a wider level.

[14] Transitioning from a traditional approach to a victim-centered, trauma-informed approach will require a shift in your department priorities which should be reflected in your policies and protocols.

As discussed earlier in this publication, a victim-centered approach allows the victim's wishes, safety, and well-being to take priority. This approach is grounded in the philosophy that the services and protections offered to the victim are complementary, not mandatory, and the victim is the decision maker regarding services and protections needed.

According to the OVC Model Standards for Serving Victims and Survivors of Crime, a victim-centered approach involves:

***Placing the crime victim's priorities, needs, and interests at the center of the work with the victim; providing nonjudgmental assistance, with an emphasis on client self-determination, where appropriate, and assisting victims in making informed choices; ensuring that restoring victims' feelings of safety and security are a priority and safeguarding against policies and practices that may inadvertently re-traumatize victims; ensuring that victims' rights, voices, and perspectives are incorporated when developing and implementing system- and community-based efforts that impact crime victims.***<sup>[15]</sup>

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[14] Leola A. Abraham and Lindsey Clancey, "Victim-centered, trauma-informed policing helps victims and police while reducing crime," Center of Naval Analyses, June 4, 2024.

[15] Achieving Excellence: Model Standards for Serving Victims & Survivors of Crime (Model Standards), Office for Victims of Crime, Office of Justice Programs (n.d.), Accessed March 27, 2025.

According to those same OVC Model Standards, a trauma-informed approach is:

*...delivered with an understanding of the vulnerabilities and experiences of trauma survivors, including the prevalence and physical, social, and emotional impact of trauma. A trauma-informed approach recognizes signs of trauma in staff, clients, and others and responds by integrating knowledge about trauma into policies, procedures, practices, and settings.*

***Trauma-informed approaches place priority on restoring the survivor's feelings of safety, choice, and control. Programs, services, agencies, and communities can be trauma-informed.***<sup>[16]</sup>

Some benefits of victim-centered and trauma-informed policing:

- Less likely to retraumatize
- Support victim healing and recovery by offering validation and belief in the victim's report
- Restore victim trust in law enforcement
- Restored trust opens the door for future reporting and expands the ability to seek help
- Support engagement and belief in the criminal justice process
- Assist in successful case investigation and evidence collection
- Better cooperation from crime victims, witnesses, family members, and the community
- Possibly increase likelihood victim will participate in a sexual assault medical forensic examination or seek medical attention
- Improve case processing efficiency
- Improved wellbeing of victim and law enforcement officers

Grassroots victim advocacy programs and services have always taken a victim-centered and trauma-informed approach. Law enforcement agencies have shown growth in understanding the importance of both approaches and are looking to effectuate those approaches in their response. To assist your law enforcement agency in reviewing your

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[16] Ibid.

sexual assault response protocol for victim-centered and trauma-informed practices, the International Association of Chiefs of Police (IACP) offers the following resource and suggestions:

- [Agency Self-Assessment Tool for Law Enforcement Victim Support \(2023\)](#)
- **International Association of Chiefs of Police Sexual Assault Guidelines recommend:**
  - Supervisors should **review all sexual assault police reports for accuracy, consistency, and victim-centered response.**
  - Supervisors should **conduct after action reviews and sexual assault case audits** to ensure officers and investigators are conducting comprehensive, victim-centered, perpetrator-focused investigations.
  - Departments should also consider **developing community partnerships to conduct confidential external reviews of sexual assault investigations** to ensure victim centered services and comprehensive investigations
  - Departments **should analyze and use data to assist in updating policy**, identifying training needs, and counseling and commending employees.

### **Culturally Sensitive**

**“Culturally responsive practices are critical for building trust, promoting effective communication, and fostering positive relationships between law enforcement and the public. By implementing victim-centered, trauma-informed, and culturally responsive practices, law enforcement can contribute to safer communities.”**

– p. 1, [Identifying and Incorporating Core Principles of Victim-Centered and Trauma-Informed Response Practices for Law Enforcement \(2024\)](#)

Alongside the growing understanding of trauma, its impacts, and of the importance of recognizing and support victims needs, the disciplines

the disciplines involved in sexual assault response have evolved in terms of understanding the importance of culturally sensitive or culturally responsive approaches. This includes policing. From the creation of the community-oriented policing services (COPS) in the 1990s to the documentation of the impacts of implicit bias on policing and of cultural competency training improving organizational outcomes for police agencies,<sup>[17]</sup> cultural sensitivity has come to be understood as a core principle of an effective law enforcement response.

The International Association of Chiefs of Police in Identifying and Incorporating Core Principles of Victim-Centered and Trauma-Informed Response defined a culturally responsive approach as:

*An approach involving understanding, learning from, and interacting effectively with people of diverse cultures, including drawing on culturally based values, traditions, spiritual beliefs, customs, languages, and behaviors to plan, implement, and evaluate programs and services. Related terms are cultural accountability, cultural competency, or cultural humility. Culturally responsive practices for law enforcement involve a commitment to understanding, respecting, and effectively engaging with the diverse communities they serve.<sup>[18]</sup>*

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[17] Stacy Berry Workman, Cultural Responsiveness in Policing, Walden Dissertations and Doctoral Studies Collection, 2022, Leola A. Abraham and Lindsey Clancey, “Victim-centered, trauma-informed policing helps victims and police while reducing crime,” Center of Naval Analyses, June 4, 2024.

[18] P. 2, citing Center for Court Innovation, Casa de Esperanza, and the Asian Pacific Institute on Gender-Based Violence, “Cultural Responsiveness & the Courts,” in Building a Culture of Justice: How Courts Are Improving Access and Understanding in Domestic Violence Cases—Viewers’ Guide (New York: Center for Court Innovation, 2016), <https://www.innovatingjustice.org/publications/building-culture-justice-how-courts-are-improving-access-and-understanding-domestic>; Marie-Elena Reyes and Ann Curry-Stevens, Protocol for Culturally Responsive Organizations: Literature Review and Standards for Performance (Portland, OR: Center to Advance Racial Equity, Portland State University 2014), <https://www.coalitioncommunitiescolor.org/research-and-publications/protocolfororgs>; Office for Victims of Crime (OVC) Training and Technical Assistance Center, “American Indian and Alaska Native Populations,” web module, 45 min., in Specific Considerations for Providing Victim Services online training.

To better serve victims of sexual assault on Tribal lands, Tribal law enforcement may consider becoming familiar with the history of the Tribe they serve, and the makeup of its constituency. Tribal communities are each unique, likely a mix of Tribal and non-tribal individuals, and some reservations may have resulted in multiple Tribes being forced to share and be recognized under one land base (ex: Mandan Hidatsa Arikara (Sahnish) Nation), each with a different culture and history.

To assist your law enforcement agency in reviewing your sexual assault response protocol for culturally responsive practices, the IACP offers the following suggestions:

- **International Association of Chiefs of Police Sexual Assault Guidelines recommend:**

- Trained department personnel conducting the preliminary victim interview should ***consider cultural differences, cognitive ability, and other factors that may impact the victim's ability and willingness to provide details.***
- Investigators ***understand the dynamics around recantation,*** particular as it may involve ***pressures from cultural and/or religious upbringing or beliefs.***
- Officers should receive ***training on cultural considerations and special needs populations of sexual assault victims.***
- Officers should keep in mind that ***culture can influence how people view or understand "sexual assault" and feel about law enforcement.*** Be aware that beliefs about gender, sexuality, sexual orientation, race, religion, etc. may vary greatly between cultures

### ***Victim's Rights***

The victim's rights movement of the 1970s and 1980s resulted in the creation of many programs designed to assist victims of crime and the establishment of victim's rights through the passage of laws at the local, Tribal, state, and federal level. Victim's rights may vary from jurisdiction to jurisdiction, but generally focus on providing the victim an

opportunity to participate in the criminal justice process and providing protection to the victim. Until recently, criminal justice systems often focused only on the defendant's rights and were seemingly indifferent to the victim's needs as a criminal case progressed through the legal process. Historically, victims were often excluded from the courtrooms and denied the chance to speak at the sentencing hearing. The criminal justice system usually left the victim on their own to attempt to reclaim their health, security, and dignity. Over the past thirty years, Tribal, state, and federal jurisdictions have made sweeping changes to this paradigm. Although victim's rights may vary from jurisdiction to jurisdiction, victims may now have statutory (legislative) and sometimes constitutional authority to assert basic victim's rights when the offender has been charged with a crime.

Access to victim's rights laws is important because it ensures that the victims are informed of and allowed to participate in the criminal process. Having a victim's rights code or chapter within your Tribal code encourages your criminal justice system to focus on victim safety throughout the criminal process. Additionally, the focus communicates to crime victims that they are an important part of the process, which can enhance victim reporting and victim participation in prosecutions. Victim's rights most often come into play in criminal cases, but a Tribe can decide if there are aspects of civil cases that should include provisions for victim's rights and safety. For purposes of this resource, only core victim's rights in criminal cases with adult victims will be addressed. It is highly recommended to research your Tribal codes for victim's rights statutes.

## *Core Victim's Rights*

The following are understood to be among the core rights for victims of crime:<sup>[19]</sup>

- The right to be treated with fairness, dignity, sensitivity, and respect;
- The right to attend and be present at criminal justice proceedings;
- The right to be heard in the criminal justice process, including the right to confer with the prosecutor and submit a victim impact statement at sentencing, parole, and other similar proceedings;
- The right to be informed of proceedings and events in the criminal justice process, including the release or escape of the offender, legal rights and remedies, available benefits and services, and access to records, referrals, and other information;
- The right to protection from intimidation and harassment;
- The right to restitution from the offender;
- The right to privacy;
- The right to apply for crime victim compensation;
- The right to the expeditious return of personal property seized as evidence whenever possible;
- The right to a speedy trial and other proceedings free from unreasonable delay; and
- The right to enforcement of these rights and access to other available remedies.

These core victim's rights are instrumental to providing some foundational protections for victims in any criminal legal process. Importantly though, Tribes are sovereigns and possess the power to draft legislation that best protects victims in their tribal community.

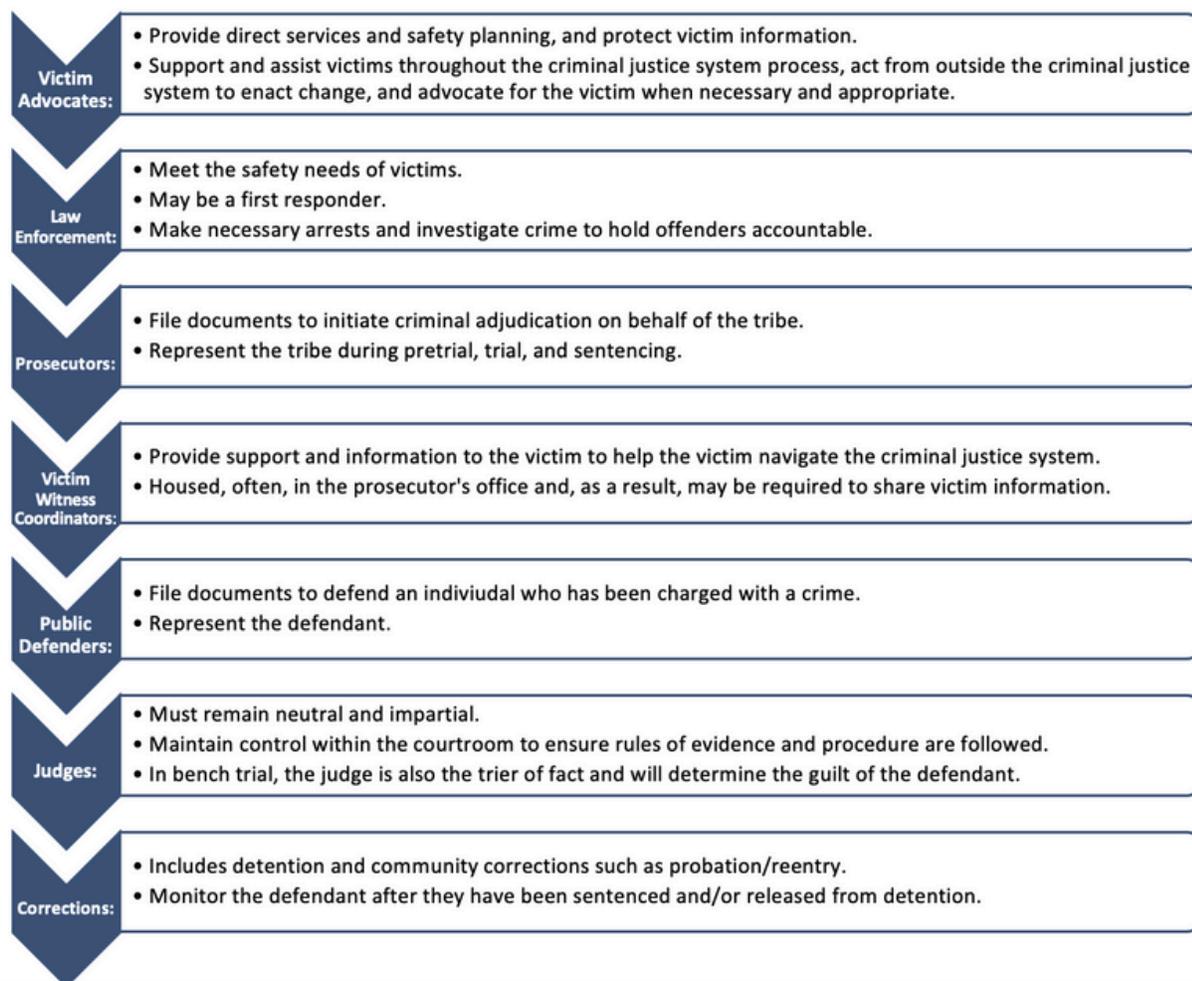
Victims of crime should be informed of their rights as soon as they enter the criminal justice process. Victims may enter the Tribal criminal justice system by making initial contact with a variety of disciplines including community-based victim advocates, law enforcement, and Tribal courts.

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[19] "About Victims' Rights," VictimLaw.org, accessed April 18, 2025, <https://victimlaw.org/victimlaw/pages/victimsRight.jsp>.

To inform victims of their rights, it is necessary that all first responders, service providers, court personnel are fully aware and trained on Tribal victim right's codes. Ultimately, the majority of disciplines in a criminal justice system have responsibilities to enforce the victim's rights and work collaboratively when possible to promote delivery of victim-centered services. Though not agents of the criminal justice system, community-based victim advocates are critical to assisting victims in navigating criminal legal processes and working with criminal justice systems professionals to protect victims

The following is a brief chart reviewing the typical players a victim may encounter navigating in a criminal legal system (including the community-based advocate assisting the victim) and their general responsibilities. When possible, agencies should work collaboratively to promote victim-centered services.



### *Law Enforcement and Victim's Rights Enforcement*

Tribal codes can mandate that responding officers perform certain duties and can provide an immunity clause. An immunity clause can hold officers harmless for the good-faith performance of those duties. This means that if the officer acts faithfully in their duty or obligation, they will not be held liable for performing those duties. Tribal codes may contain a “mandatory arrest” section. The goal of a “mandatory arrest” law is to require law enforcement to make an arrest for specific crimes.

Law enforcement departments often have internal policies, procedures, and protocols that they follow when responding to alleged criminal activity. These policies, procedures, and protocols generally reflect best practices in the field and may reflect a victim-centered approach to first response and investigation. These law enforcement policies provide an opportunity to cross-reference victim's rights statutes to ensure that law enforcement is aware of specific rights and further ensure that those rights are considered during the criminal justice system response.

Additionally, it is recommended that law enforcement incorporate a trauma-informed approach when responding to alleged criminal activity and particularly when engaging crime victims.

The following chart is taken from Tribal Law Policy Institute's publication, [Condensed Guide for Drafting Tribal Victim's Rights Codes](#) (2022). For additional suggested victim's rights enforcement steps by other disciplines within a criminal justice response, please review Part 4 of the Condensed Guide.

Right of Victim	Steps that LAW ENFORCEMENT can take to help with enforcement of the right
<b>Right to Attend Hearings</b>	<ul style="list-style-type: none"> <li>• Provide protective services to ensure safe entry and departure from hearings.</li> <li>• Provide protective services to ensure safety of victim during hearings.</li> </ul>
<b>Right to Compensation</b>	<ul style="list-style-type: none"> <li>• Preserve evidence proving damages or injury to person or property and share that evidence with the victim as requested and permitted by law.</li> </ul>
<b>Right to Be Heard</b>	<ul style="list-style-type: none"> <li>• Conduct victim interviews and/or collect statement from victim in a victim-centered and compassionate manner.</li> </ul>
<b>Right to Be Informed</b>	<ul style="list-style-type: none"> <li>• Inform victim of rights.</li> <li>• Inform victim of victim advocacy services.</li> <li>• Informed of progress of investigation.</li> </ul>
<b>Right to Privacy</b>	<ul style="list-style-type: none"> <li>• Protect victim information (identity, address, contact information) as required by law or process.</li> </ul>
<b>Right to Protection</b>	<ul style="list-style-type: none"> <li>• Work with Victim Advocate to secure emergency shelter.</li> <li>• Work with Victim Advocate on safety planning.</li> <li>• Provide necessary law enforcement protective services as needed to protect victim's safety (e.g., drive-bys when followed)</li> <li>• Maintain proper chain of custody for evidence gathered.</li> </ul>
<b>Right to Restitution</b>	<ul style="list-style-type: none"> <li>• Preserve and share evidence proving damages or injury to person or property that may support a claim to restitution.</li> <li>• Assist in the execution of court orders related to restitution.</li> </ul>
<b>Right to Return of Property</b>	<ul style="list-style-type: none"> <li>• Accompany victim to retrieve personal property in safe manner.</li> <li>• Assist in return of the victim's property in a timely manner.</li> </ul>
<b>Right to Speedy Trial</b>	<ul style="list-style-type: none"> <li>• Assist with a speedy trial process as required by law or procedure.</li> </ul>
<b>Right to Enforcement/Remedies</b>	<ul style="list-style-type: none"> <li>• Assist with the enforcement of victim's rights as required by law or procedure.</li> </ul>

For more information on Victim's Rights, please check out:

- [Condensed Guide for Drafting Tribal Victim's Rights Codes](#) (2022)
- [Guide for Drafting or Revising Victim-Centered Tribal Laws Against Sexual Assault and Stalking](#) (2017).

To assist your law enforcement agency in reviewing your sexual assault response protocol for practices that respect victim's rights, the IACP offers the following suggestions:

- International Association of Chiefs of Police Sexual Assault Guidelines recommend:
  - Law enforcement personnel involved in the initial response to a sexual assault should **inform victims and co-victims—or, when appropriate, their guardians—of their rights orally and through written material.** Ensure language barriers or accessibility needs do not impede interactions.
  - Law enforcement personnel involved in the initial response to a sexual assault should **ensure victims and co-victims receive appropriate medical attention or referrals to resources for acute and emerging needs. Review options for medical forensic examinations, including information on where to obtain the examinations and the availability of crime victim compensation funding.**
  - Law enforcement personnel involved in the initial response to a sexual assault should be **trained in supporting victims and co-victims in developing safety plans when needed.**
  - Evidence collection teams should **make every effort to return property in the time frames promised to victims and co-victims.**
  - Evidence collection teams should **explain the evidence collection process clearly, providing information about victims' and co-victims' rights and options. Allow them to make informed decisions about their involvement.**
  - Supervisors should **conduct audits to ensure the initial response and case report align with emerging practices, including providing information to victims and co-victims**

**about their rights, compensation, and available resources.**

- o Agencies should **ensure the initial response prioritizes victims' and co-victims' needs, rights, and well-being.**

**Resource: International Association of Chiefs of Police, Sexual Assault Response Policy and Training Content Guidelines**

(International Association of Chiefs of Police Sexual Assault Guidelines)

Outside of TLPI's Tribal Law Enforcement Protocol Resource: Sexual Assault Guide for Drafting or Revising Tribal Law Enforcement Agency's Protocols Responding to Sexual Assault (2008), the primary resource available to guide law enforcement agencies in the development of sexual assault policies and protocol is the International Association of Chiefs of Police, Sexual Assault Response Policy and Training Content Guidelines (2015). The International Association of Chiefs of Police Sexual Assault Guidelines identify the following as key elements to be addressed in a sexual assault policy:

**ELEMENTS OF A SEXUAL ASSAULT POLICY**

A comprehensive sexual assault policy should address the following key elements:

1. Dispatch/Call Taker Response
  - a. Victim response to trauma
  - b. Initial facts and immediate safety of victim
  - c. Vital information to gather for responding officer/detectives
  - d. Victim support details
2. Responding Officer Duties
  - a. Emergency/initial response
  - b. Assisting the victim and victim interactions
  - c. Evidence collection and crime scene processing
  - d. Documentation
3. Supervisor Duties
  - a. Assisting officers
  - b. Report review
  - c. Officer mentoring and accountability
4. Evidence Collection
  - a. Chain of custody
  - b. Drugs and alcohol
  - c. DNA
  - d. Technology
  - e. Evidence considerations of non-stranger and stranger assault
5. Victim Interviews
  - a. Preliminary/initial interview
    - i. Victim advocates
      1. Role of the advocate
    - ii. Initiating the interview
    - iii. Impact of trauma
    - iv. Interview questions and techniques
    - v. Investigative strategy
    - vi. Addressing possible defense strategies
      1. Denial
      2. Mistaken identity
      3. Consent
    - vii. Safety planning with the victim
  - viii. Resources for the victim
  - b. Follow-up interview
    - i. Interview questions and techniques
6. Suspect Interviews
  - a. Background/criminal history check
  - b. Timeline development
  - c. Interview considerations
  - d. Pretext phone calls
7. Victim Rights
  - a. Confidentiality and privacy
  - b. Participation in the investigation
8. Sexual Assault Medical Forensic Examinations
  - a. Role of the investigating officer
  - b. Role of the forensic examiner
  - c. Coordination with forensic examiner
  - d. Considerations for drug-facilitated sexual assault
9. Suspect Forensic Exams
  - a. Protocol for examination
  - b. Role of the forensic examiner
  - c. Evidence collection
10. Report Writing
  - a. Documentation
  - b. Impact of trauma
  - c. Language
  - d. Case coding/decisions
11. Sexual Assault Response and Resource Teams (SARRTs)
12. Victim Advocates
13. Working with the Prosecutor
  - a. Arrest and prosecution decisions
  - b. Evidence-based prosecution
14. Alternative reporting methods
15. Consideration for specific populations/communities

## **E. Evolutions in Tribal Authority to Respond to Sexual Assault**

Much has happened in the realm of criminal jurisdiction in Indian country since the [Tribal Law Enforcement Protocol Resource: Sexual Assault](#) publication first came out in 2008. A short refresher on the basic of criminal jurisdiction in Indian country is helpful prior to discussing the evolution in the field, followed by a brief discussion on the [Violence Against Women Act 2022](#) relating to Tribal criminal jurisdiction over non-Indians committing certain covered crimes in Indian country with a focus on the covered crimes of Sexual Violence, and a brief discussion of two U. S. Supreme Court decisions on law enforcement authority and state criminal jurisdiction in Indian country. This segment concludes with a discussion on addressing sexual assault in Indian country when lacking a Tribal sexual assault code.

Jurisdiction refers to the power of a government to enact laws that regulate conduct and to enforce those laws through a court system. Jurisdictional authority impacts the ability of law enforcement to make arrests, the ability of prosecutors and individuals to file charges or complaints, and the ability of courts to render legal decisions. Jurisdiction is important to understand because it provides a legal basis for a Tribe to legislate and adjudicate.

### ***Tribal Criminal Jurisdiction***

Criminal jurisdiction refers to the power of a court to hear and decide cases of a criminal nature. Criminal cases are usually prosecuted by governments: Tribal, state, or federal. The burden of proof in a criminal case requires the prosecutor to prove that the defendant committed a crime beyond a reasonable doubt. This is the highest burden of proof in American jurisprudence as a defendant's freedom may be at issue. If a person is found guilty of a crime, the penalty may be incarceration and/or fines.

Criminal jurisdiction in Indian Country<sup>[1]</sup> is a complex jurisdictional maze. Three sovereigns (Tribal, federal, state) may be asserting criminal jurisdiction over crimes committed in Indian country. In the analysis of which sovereign may exercise criminal jurisdiction, you must consider the crime committed, the status of the territory where the crime was committed, and the Indian or non-Indian status of the perpetrator and the victim. Additionally, Tribal criminal jurisdiction may run concurrently (at the same time) with federal or state criminal jurisdiction. A combination of federal statutes and federal court decisions have created this complex maze of laws and regulations that can make it difficult for Tribes to address crime committed in Indian country.

Before discussing the intricacies of the three sovereigns that may be asserting criminal jurisdiction over sexual assaults in Indian country, a definition of “Indian country” would be helpful.

“Indian Country” is a legal term that encompasses:

- All lands within the limits of any Indian reservation
- Allotted land in trust
- Rights-of-way running through a reservation
- All dependent Indian communities (such as a Pueblo) within the borders of the United States

Tribal criminal jurisdiction over Indian country in Alaska is complicated. VAWA 2022 included several provisions to address public safety in Alaska Native villages. These provisions help clarify the power of Alaska Native Tribal governments to exercise civil and criminal jurisdiction in their Villages by: 1) defining the term “Village” and then 2) confirming the Tribal government’s authority within the Village. For more info see [Clarifying Alaska Tribal Authority ANJC 2024](#), [25 U.S.C. §1305](#), and [Concurrent Tribal Authority Under Public Law 83-280 in Alaska \(2023\)](#).

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[20] 18 U.S.C. §1151.

## ***Special Tribal Criminal Jurisdiction over Non-Indians Committing Covered Crimes in Indian Country***

In general, Tribal courts have criminal jurisdiction over any crime committed by a member of a federally recognized Tribe that takes place in Indian Country.<sup>[21]</sup> Tribes can prosecute Indians for sexual assault crimes committed in Indian Country regardless of whether the victim is Indian or non-Indian. Federal prosecution of a sexual assault crime committed in Indian country does not preclude a prosecution of the same crime in Tribal court.<sup>[22]</sup>

A substantial hurdle to Tribes protecting sexual assault victims is a limitation on a Tribal criminal court's jurisdiction over non-Indians who commit crimes in Indian country. The U.S. Supreme Court decision in *Oliphant v. Suquamish Indian Tribe*<sup>[23]</sup> limited the ability of Tribal governments to try and punish non-Indians.<sup>[24]</sup> Congress has loosened that limitation somewhat through 25 U.S.C. § 1304—Tribal jurisdiction over certain crimes of domestic violence (known as Special Tribal Criminal Jurisdiction [STCJ]).<sup>[25]</sup> STCJ can be exercised by a Tribe that meets federally mandated due process protections.<sup>[26]</sup> A Tribe can exercise STCJ over non-Indians who commit criminal acts in Indian country that fall within the statutory nine “covered crimes” categories.<sup>[27]</sup> Note that seven of the nine categories require an Indian victim. The nine VAWA 2022 covered crimes include:

- Assault of Tribal justice personnel (does not require an Indian victim);
- Child violence;

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[21] U.S. v. Lara, 541 U.S. 193 (2004).

[22] Ibid.

[23] *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

[24] Ibid.; the terms Indian and non-Indian are used throughout this Guide. Whether a perpetrator or victim are recognized as members of a federally recognized Tribe (Indian) or are non-Indians is vital to determining a Tribe's criminal jurisdiction.

[25] For further reading on STCJ and its previous iteration special domestic violence criminal jurisdiction, visit [www.TribalVAWA.org](http://www.TribalVAWA.org).

[26] 25 U.S.C § 1304(d).

[27] 25 U.S.C. § 1304 (c)(1) and (2).

- Dating violence;
- Domestic violence;
- Obstruction of justice (does not require an Indian victim);
- Sexual violence;
- Sex trafficking;
- Stalking; and
- Violation of a protection order.

The covered crime of sexual violence is found at 25 U.S.C. §1304(a)(13). The term “sexual violence” means any nonconsensual sexual act or contact proscribed by the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs, including in any case in which the victim lacks the capacity to consent to the act. This victim must be an Indian. Ultimately, this covered crime will be driven by the applicable Tribal law.

The covered crime of assault of tribal justice personnel is found at 25 U.S.C. § 1304 (a) (1). The term “assault of tribal justice personnel” means any violation of the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs that involves the use, attempted use, or threatened use of physical force against an individual authorized to act for, or on behalf of, that Indian tribe or serving that Indian tribe during, or because of, the performance or duties of that individual in—

- (A)** preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting a covered crime;
- (B)** adjudicating, participating in the adjudication of, or supporting the adjudication of a covered crime;
- (C)** detaining, providing supervision for, or providing services for persons charged with a covered crime; or
- (D)** incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons convicted of a covered crime.

This covered crime requires use, attempted use, or threatened use of physical force against an individual. Take note of the broad list of individuals who might be included in this covered crime which spans much wider than Tribal law enforcement. Also note that this covered crime must be tethered to a covered crime. For example, a few of the actions listed in the statute include preventing, detecting, investigating, adjudicating prosecuting a covered crime. It is unclear whether the assault component can serve as the covered crime or whether a separate covered crime is required. The victim in 'assault of tribal justice personnel' does not need to be an Indian. Ultimately, this covered crime will be driven by the applicable Tribal law.

Tribes that can meet the mandates to exercise STCJ, may now prosecute non-Indians committing covered crimes in Indian country. Tribes may review their existing criminal codes to determine which crimes might fit within the STCJ covered crimes.

The defendant's rights necessary to exercise STCJ are found at 25 U.S.C. §1304(d):

1. All applicable rights under the Indian Civil Rights Act at 25 U.S.C. §1302,
2. if a term of imprisonment of any length may be imposed, all rights described in section 1302(c) of this title;
3. the right to a trial by an impartial jury that is drawn from sources that—reflect a fair cross section of the community; and do not systematically exclude any distinctive group in the community, including non-Indians; and
4. all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise special Tribal criminal jurisdiction over the defendant.

In addition to limiting Tribal criminal jurisdiction over non-Indians, federal laws may also impact Tribal criminal sentencing power. Examples include the Indian Civil Rights Act (ICRA)<sup>[28]</sup> and enhanced sentencing authority under the Tribal Law and Order Act (TLOA).

<sup>[29]</sup>Understanding ICRA and determining whether your Tribe exercises enhanced sentencing authority under TLOA will be important as your law enforcement agency considers penalties and sanctions for sexual assault crimes committed in Indian country. For more information on VAWA, TLOA, and the ICRA, check out TLPI's enhanced Tribal authority series: <https://www.home.tlpi.org/enhanced-sentencing-authority>.

## **U.S. Supreme Court Cases Affecting Tribal Criminal Authority in Indian Country**

In 2022, a U.S. Supreme Court case, Oklahoma v. Castro-Huerta<sup>[30]</sup>, upended long-standing jurisdictional principles regarding state criminal jurisdiction over crimes committed by non-Indians in Indian country. The Court held that the federal and the state governments have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country. Thus, the states have criminal jurisdiction over non-Indians committing crimes against Indians in Indian country unless state criminal jurisdiction has been preempted by federal law. Prior to Castro-Huerta, the Supreme Court had held that states have criminal jurisdiction over non-Indians committing crimes against non-Indians in Indian country.<sup>[31]</sup>

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[28] 25 U.S.C. § 1301–1304. ICRA applies to any Tribal court criminal proceeding, and it limits a Tribe's ability to sentence for any one crime to one year in jail and/or a \$5,000 fine. If a person is convicted of more than one crime such as kidnapping and rape, federal law allows up to one year for each offense for a maximum sentence of three years.

[29] 25 U.S.C. § 1302(b). TLOA provides that if a Tribe complies with the prerequisites in the statute, the Tribe's criminal court can sentence certain defendants to three years imprisonment and/or impose a \$15,000 fine for a single offense. Additionally, a Tribal court can stack sentences up to a cumulative total of nine years for multiple offenses addressed in one criminal proceeding.

[30] *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022).

[31] Whether victimless crimes committed by non-Indians in Indian country are subject to state jurisdiction is an unanswered question of law. The Supreme Court has suggested in dicta that states possess exclusive criminal jurisdiction over victimless crimes committed by non-Indians in Indian country (*U.S. v. Langford*, 641 F.3d 1195 (2011)). *State v. Stanton*, supports this principle which noted that

While it is well established that Tribal law enforcement officers have criminal authority to arrest and detain Indians in Indian country, the waters are murky with respect to Tribal criminal authority to arrest and detain non-Indians in Indian country. However, in 2021, the U.S. Supreme Court held in Cooley that Tribal police officers have the authority to detain temporarily and to search non-Indian persons traveling on public rights-of-way running through a reservation for potential violations of state or federal law.<sup>[32]</sup> Additionally, Tribal law enforcement may detain non-Indians through duly executed cross-deputization agreements between the tribe and other law enforcement agencies in the county, state or federal jurisdiction.

Tribal law enforcement officers have the authority to arrest and detain both Indians and non-Indians for sexual assault crimes committed in Indian country under the following circumstances and conditions:

- When there is probable cause to believe that an Indian has committed the crime of sexual assault against another Indian.
- When there is probable cause to believe that an Indian has committed the crime of sexual assault against a non-Indian.
- Cross-deputized tribal law enforcement officers may arrest and detain both Indians and non-Indians on behalf of the certifying agency.

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victimless crimes by non-Indians appear to be subject to state jurisdiction under the logic of *United States v. McBratney* and *Draper v. United States* (*State v. Thomas*, 233 Mont. 451 (1988) reasoning that such crimes do not involve essential Tribal relations or affect the rights of Indians (*State v. Flint*, 157 Ariz. 227 (1988). *Oklahoma v. Castro-Huerta* clarified that states have concurrent jurisdiction with the federal government to prosecute crimes committed by non-Indians against Indians in Indian country (*Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022)). This decision emphasized that Indian country is part of the state and states have jurisdiction over all their territory unless preempted by federal law or principles of Tribal self-government. The General Crimes Act, 18 U.S.C.A. § 1152, extends state criminal laws to Indian country for federal prosecutions but does not preempt state jurisdiction over crimes committed by non-Indians (18 U.S.C.A. § 1152). Similarly, Public Law 280 grants certain states jurisdiction over crimes committed by or against Indians in Indian country but does not preempt preexisting state jurisdiction (18 U.S.C.A. § 1162).

[32] *U.S. v. Cooley*, 141 S.Ct. 1638 (2021).

- Tribal law enforcement officers can stop, search and temporarily detain non-Indians for potential violations of state or federal law until the appropriate state or federal law enforcement officers arrive according to Cooley discussed above.

**For reference: Jurisdictional Charts Addressing Criminal Jurisdiction in Indian Country**

**Chart 1.A. Jurisdiction in Indian Country where P.L 280 does NOT apply  
Indian Offender**

CRIMINAL JURISDICTION IN INDIAN COUNTRY NOT AFFECTED BY P.L.280/STATE JURISDICTION		
Indian* offender: For offenses against a person or a person’s property where act was committed in Indian country		
Victim Status	Crimes	Jurisdiction
Indian* Victim	<b>Federal Major Crimes</b> <i>(as defined by <a href="#">Major Crimes Act (MCA)**</a> or by other federal laws including <a href="#">18 U.S.C. § 2241, § 2242</a>; <a href="#">18 U.S.C. § 1365</a>, <a href="#">18 U.S.C. § 661</a>.)</i>	FEDERAL
	<b>Violations of Tribal Criminal Laws</b> Inherent Tribal Authority/Tribal Codes	TRIBAL
Non-Indian victim	<b>Federal Major Crimes</b> <i>(as defined by <a href="#">Major Crimes Act (MCA)**</a> or by other federal laws including <a href="#">18 U.S.C. § 2241, § 2242</a>; <a href="#">18 U.S.C. § 1365</a>, <a href="#">18 U.S.C. § 661</a> and crimes may also include crimes under the <a href="#">Assimilative Crimes Act, 18 USC § 13</a>)</i>	FEDERAL
	<b>Federal Enclave Laws</b> <i>Under <a href="#">General Crimes Act, 18 U.S.C. §1152***</a> including crimes contained in state codes where there is no federal statute for the category of offense under the <a href="#">Assimilative Crimes Act, 18 U.S.C. §13</a>.</i>	FEDERAL
	<b>Violations of Tribal Criminal Laws</b> Inherent Tribal Authority/Tribal Codes	TRIBAL
<b>Victimless Crimes with no injury/damage to person or property</b>	<b>Violations of Tribal Criminal Laws</b> Inherent Tribal Authority/Tribal Codes	TRIBAL

**Chart 1.B. Jurisdiction in Indian Country where P.L 280 does NOT apply  
Non-Indian Offender**

CRIMINAL JURISDICTION IN INDIAN COUNTRY NOT AFFECTED BY P.L.280/STATE JURISDICTION		
Non-Indian offender: For offenses against a person or a person's property where act was committed in Indian country		
Victim Status	Crimes	Jurisdiction
Indian* Victim	<b>Federal Enclave Laws</b>  Under <u>General Crimes Act, 18 U.S.C. §1152</u> *** including crimes contained in state codes where there is no federal statute for the category of offense under the <u>Assimilative Crimes Act, 18 U.S.C. §13</u> .	FEDERAL
	<b>Violations of State Criminal Laws in Indian country</b>  <i>Oklahoma v. Castro-Huerta</i> , <u>597 U.S. 629</u> (2022)	STATE
	<b>Violations of Tribal Criminal Laws</b>  Inherent Tribal Authority affirmed by VAWA 2022 STCJ**** over 9 covered crimes committed in Indian country if Tribe has implemented STCJ. <u>25 U.S.C. §1304</u> . Note that <u>obstruction of justice and assault of Tribal justice personnel</u> does not require an Indian victim.	TRIBAL (VAWA 2022 STCJ)
Non-Indian victim	<b>Violation of State Criminal Laws in Indian country</b>  <i>U.S. v. McBratney</i> , <u>104 U.S. 621</u> (1881)	STATE
	<b>Violations of Tribal Criminal Laws</b>  Inherent Tribal Authority affirmed by VAWA 2022 STCJ **** over <u>the covered crimes of obstruction of justice and assault of tribal justice personnel</u> if the tribe has implemented STCJ. <u>25 U.S.C. §1304</u> .	TRIBAL (VAWA 2022 STCJ)
Victimless Crimes with no injury/damage to person or property	<b>Violation of State Criminal Laws in Indian country</b>  POTENTIALLY: <i>Case law dicta relying on the reasoning in U.S. v. McBratney</i> , <u>104 U.S. 621</u> (1881). <sup>33</sup>	STATE (LIKELY)
	<b>Violations of Tribal Criminal Laws</b>  Inherent Tribal authority affirmed by VAWA 2022 STCJ **** over <u>the covered crimes of obstruction of justice and assault of tribal justice personnel</u> if the tribe has implemented STCJ. <u>25 U.S.C. §1304</u> .	TRIBAL (VAWA 2022 STCJ)

[33] *Supra*, note 31.

\* Indian status for purposes of this chart includes those individuals enrolled or recognized as an Indian by a federally recognized tribe or the federal government and possessing some degree of Indian blood)

\*\* If the offense is considered a Major Crime by federal law or listed in the Major Crimes Act (MCA), there is federal jurisdiction, exclusive of the state, but probably not the Tribe. If the listed offense is not otherwise defined and punished by federal law applicable in the special maritime and territorial jurisdiction of the United States, state law is used in federal courts. See 18 U.S.C. § 1153(b) and 18 U.S.C. §13. If not a major crime under federal law, then Tribal jurisdiction is exclusive.

\*\*\* 18 U.S.C. §1152 (does not apply to crimes committed by one Indian against another Indian, nor to crimes committed by Indians already punished by the law of the Tribe, nor where the exercise of federal jurisdiction violates any treaty stipulations where the jurisdiction is exclusively Tribal). This includes crimes contained in state code where there is no federal statute for the category of offense pursuant to the Assimilative Crimes Act at 18 U.S.C. §13.

\*\*\*\*Tribal jurisdiction for covered crimes committed by non-Indians in Indian country under 25 U.S.C. §1304 when the tribe has implemented Special Tribal Criminal Jurisdiction (STCJ) as outlined in the reauthorization of the Violence Against Women Act.

*Note: Federal jurisdiction for federal crimes of general applicability applies to any person nationwide. Federal prosecutions of federal crimes of general applicability are not based on territorial jurisdiction over location of the crime. (e.g., drug offenses, firearm possession by prohibited persons, Violence Against Women Act federal offenses, Tribal embezzlement, assault on a federal officer, theft from Tribal casino, child pornography)*

*This resource has drawn heavily on Indian Country Criminal Jurisdiction Chart created by Arvo Q. Mikkanen, Assistant U.S. Attorney and Tribal Liaison, U.S. Attorney's office, Western District of Oklahoma, (Oct. 2022 Version) with added variations.*

## **Public Law 280 (P.L. 280)**

Public Law 280 (P.L. 280), 67 Stat. 588, is a piece of federal legislation that introduced state criminal jurisdiction into Indian country in 1953. The legislation created mandatory<sup>[34]</sup> and optional<sup>[35]</sup> states. This distinction is important to analyzing federal jurisdiction over crimes committed in Indian country. For the P.L. 280 mandatory states of California, Minnesota (except Red Lake), Nebraska, Oregon (except Warm Springs) and Wisconsin and Alaska (upon statehood with the exception of the Metlakatla Indian Community),<sup>[36]</sup> the statute facilitated the federal government relinquishing its Indian country authority to the listed states. This was done without Tribal consent, and the states could not refuse.

For optional states, P.L. 280 provided states the option to assume full or partial jurisdiction over offenses committed by Indians within Indian country. It also allowed other states options to acquire jurisdiction (in various forms civil and/or criminal) over state crimes committed in Indian country. This resulted in uncertainty about whether the federal criminal jurisdiction could be exercised in the optional states. A 2017 Memorandum for United States Attorneys in Optional PL280 States indicates that federal jurisdiction still exists in the optional states to prosecute both 18 U.S.C. §1152 (General Crimes Act) and §1153 (Major Crimes Act) arising in Indian country.

Subsequent acts of Congress, court decisions, and state actions to retrocede jurisdiction back to the federal government have subdued some of the effects of P.L. 280.<sup>[37]</sup> More information on Public Law 280

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[34] Referring to P.L. 280 states of California, Minnesota, Nebraska, Oregon, and Wisconsin and then Alaska upon statehood with exceptions. Since the passage of P.L. 280, some of these mandatory states have retroceded jurisdiction back to the federal government.

[35] Referring to all other P.L. 280 states and P.L. 280- like states that acquired jurisdiction at their option.

[36] "What is Public Law 280 and where does it apply?" [www.bia.gov](http://www.bia.gov), Indian Affairs, Department of Interior, August 19, 2017, Accessed June 13, 2025.

[37] Ibid.

may be found at <http://www.tribal-institute.org/lists/pl280.htm> (accessed on May 1, 2025) and in [Understanding Tribal-State Jurisdiction](#) from the Native American Rights Fund.

Two charts on jurisdiction in Indian country where P.L. 280 does apply are included below.

### **Chart 2.A. Jurisdiction in Indian country where P.L. 280 DOES apply** **Indian Offender**

<b>CRIMINAL JURISDICTION IN INDIAN COUNTRY AFFECTED BY P.L.280/STATE JURISDICTION</b>		
<b>Indian* offender: For offenses against a person or a person’s property where act was committed in Indian country in P.L. 280 jurisdictions</b>		
<b>Victim Status</b>	<b>Crimes</b>	<b>Jurisdiction</b>
<b>Indian* Victim</b>	<b>Major Crimes****: Only in Optional States***</b>  <i>(as defined by <a href="#">Major Crimes Act (MCA)**</a> or by other federal laws including <a href="#">18 U.S.C. § 2241, § 2242</a>; <a href="#">18 U.S.C. § 1365</a>, <a href="#">18 U.S.C. § 661</a>.)</i>	<b>FEDERAL</b>
	<b>Violation of State Criminal Laws in Indian Country</b>  Both Mandatory States** and Optional States***  <a href="#">P.L. 280</a> (if state elected to exercise criminal jurisdiction in Indian country)	<b>STATE</b>
	<b>Violations of Tribal Criminal Laws</b>  Inherent Tribal Authority/Tribal Codes	<b>TRIBAL</b>
<b>Non-Indian victim</b>	<b>Major Crimes**** only in Optional States***</b>  <i>(as defined by <a href="#">Major Crimes Act (MCA)****</a> or by other federal laws including <a href="#">18 U.S.C. § 2241, § 2242</a>; <a href="#">18 U.S.C. § 1365</a>, <a href="#">18 U.S.C. § 661</a>).</i>  <b>General Crimes Act, 18 U.S.C. §1152 only in Optional States *****</b>  <i><a href="#">General Crimes Act, 18 U.S.C. §1152*****</a> including crimes contained in state codes where there is no federal statute for the category of offense under the <a href="#">Assimilative Crimes Act, 18 U.S.C. §13</a>.</i>	<b>FEDERAL</b>
	<b>Violations of State Criminal Laws in Indian country: Mandatory** and Optional States***</b>	<b>STATE</b>

	<a href="#">P.L. 280</a> (if state elected to exercise criminal jurisdiction in Indian country)	
	<b>Violations of Tribal Criminal Laws</b> Inherent Tribal Authority/Tribal Codes	TRIBAL
<i>Victimless Crimes with no injury/damage to person or property</i>	<b>Violations of State Criminal Laws in Indian country: Mandatory** and Optional States ***</b>	STATE
	<a href="#">P.L. 280</a> (if state elected to exercise criminal jurisdiction in Indian country)	
	<b>Violations of Tribal Criminal Laws</b> Inherent Tribal Authority/Tribal Codes	TRIBAL

### Chart 2.B. Jurisdiction in Indian country where P.L. 280 DOES apply Non-Indian Offender

CRIMINAL JURISDICTION IN INDIAN COUNTY NOT AFFECTED BY P.L.280/STATE JURISDICTION		
Non-Indian offender: For offenses against a person or a person's property where act was committed in Indian country in P.L. 280 jurisdictions		
Victim Status	Crimes	Jurisdiction
Indian* Victim	<b>General Crimes Act, 18 U.S.C. §1152: Optional States ***</b>  <a href="#">General Crimes Act, 18 U.S.C. §1152*****</a> including crimes contained in state codes where there is no federal statute for the category of offense under the <a href="#">Assimilative Crimes Act, 18 U.S.C. §13</a> .	FEDERAL
	<b>Violations of State Criminal Laws: Mandatory** and Optional States***</b>  <a href="#">P.L. 280</a> (if state elected to exercise criminal jurisdiction in Indian country) and <i>Oklahoma v. Castro-Huerta</i> , <a href="#">597 U.S. 629 (2022)</a>	STATE
	<b>Violations of Tribal Criminal Laws</b> Inherent Tribal Authority affirmed by VAWA 2022 STCJ***** over 9 covered crimes committed in Indian country if Tribe has implemented STCJ. <a href="#">25 U.S.C. §1304</a> .	TRIBAL (VAWA 2022 STCJ)
Non-Indian victim	<b>Violation of State Criminal Laws: Mandatory** and Optional States***</b>  <a href="#">P.L. 280</a> (if state elected to exercise criminal jurisdiction in Indian country)	STATE
	<b>Violations of Tribal Criminal Laws</b> Inherent Tribal Authority affirmed by VAWA 2022 STCJ ***** over <u>the covered crimes of obstruction of justice and assault of tribal justice personnel</u> if the Tribe has implemented STCJ. <a href="#">25 U.S.C. §1304</a> .	TRIBAL (VAWA 2022 STCJ)

<b>Victimless Crimes with no injury/damage to person or property</b>	<b>Violation of State Criminal Laws in Indian country</b>	<b>STATE (LIKELY)</b>
	POTENTIALLY: <i>Case law dicta relying on the reasoning in U.S. v. McBratney, <a href="#">104 U.S. 621 (1881)</a>.<sup>38</sup></i>	
	<b>Violations of Tribal Criminal Laws</b>	<b>TRIBAL (VAWA 2022 STCJ)</b>
	Inherent Tribal authority affirmed by VAWA 2022 STCJ **** over <u>the covered crimes of obstruction of justice and assault of Tribal justice personnel</u> if the Tribe has implemented STCJ. <a href="#">25 U.S.C. §1304</a> .	

\* Indian status for purposes of this chart includes those individuals enrolled or recognized as an Indian by a federally recognized Tribe or the federal government and possessing some degree of Indian blood).

\*\* At passage of P.L. 280, the Mandatory P.L. 280 States were California, Minnesota (except Red Lake), Nebraska, Oregon (except Warm Springs), Wisconsin, and Alaska (upon statehood except Metlakatla Indian Community) became a mandatory state. Some of the original mandatory states have retroceded federal jurisdiction in Indian country back to the federal government.

\*\*\*Optional P.L. 280 States: States that opted to exercise criminal jurisdiction in Indian country pursuant to P.L. 280.

\*\*\*\* If the offense is considered a Major Crime by federal law or listed in the Major Crimes Act (MCA), there is federal jurisdiction, exclusive of the state, but probably not the Tribe. If the listed offense is not otherwise defined and punished by federal law applicable in the special maritime and territorial jurisdiction of the United States, state law is used in federal courts. See 18 U.S.C. § 1153(b) and 18 U.S.C. §13.

\*\*\*\*\* 18 U.S.C. §1152 (does not apply to crimes committed by one Indian against another Indian, nor to crimes committed by Indians already punished by the law of the Tribe, nor where the exercise of federal jurisdiction violates any treaty stipulations where the jurisdiction is exclusively Tribal). This includes crimes contained in state code where there is no federal statute for the category of offense pursuant to the Assimilative Crimes Act at 18 U.S.C. §13.

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[38] *Supra*, note 31.

\*\*\*\*\*Tribal jurisdiction for 9 covered crimes committed by non-Indians in Indian country under 25 U.S.C. §1304 when the Tribe has implemented Special Tribal Criminal Jurisdiction (STCJ).

*Note: Federal jurisdiction for federal crimes of general applicability applies to any person nationwide. Federal prosecutions of federal crimes of general applicability are not based on territorial jurisdiction over location of the crime. (e.g., drug offenses, firearm possession by prohibited persons, Violence Against Women Act federal offenses, Tribal embezzlement, assault on a federal officer, theft from Tribal casino, child pornography).*

*Chart #2 was adapted to incorporate archived material from the U.S. Department of Justice Criminal Resource Manual, 689. Jurisdictional Summary. The charts also reflect a 2017 Memorandum for United States Attorneys in "Optional" Public Law 280 States which affirmed that the federal government does have concurrent criminal jurisdiction under 18 U.S.C. §§ 1152 and 1153 over Indian-country crimes that fall within an "optional P.L. 280" state's jurisdiction.*

### **Addressing Sexual Assault in Indian Country When Lacking a Tribal Sexual Assault Code**

When a Tribe lacks a Tribal code or Tribal court infrastructure to address sexual assault, there are a couple of avenues to explore depending on which jurisdiction will be prosecuting the sexual assault. If the Tribe is unable to prosecute the crime, the two other possible jurisdictions that might have the authority to prosecute the crime include either the federal prosecutors or state prosecutors. Review the jurisdictional charts above for potential jurisdictions to prosecute crimes committed in Indian country.

It might be best to explore collaborations with either or both of those jurisdictions. The Tribal Law and Policy Institute has a robust library of resources focusing on collaborations between tribal, state and federal jurisdictions.

Walking on Common Ground is an on-going initiative to promote and facilitate Tribal, state, and federal collaboration. The initial effort focused upon Tribal, state, and federal court or justice system collaborations, but it now also includes Tribal, state, and federal collaborations on a broader range of issues. The official statement of the Walking on Common Ground initiative (adopted by the 2005 Walking on Common Ground planning committee) is as follows:

***Tribal, federal, and state justice communities join together, in the spirit of mutual respect and cooperation, to promote and sustain collaboration, education, and a level of support to ensure equal access to justice.***

### III. Protocol Development Considerations

A note about terminology – the following chart clarifies the difference between policies and protocols. The original publication released in 2008 contains a model Tribal law enforcement sexual assault protocol along with a workbook. This Companion Guide can be used to both inform a Tribal law enforcement protocol but could also apply to drafting policies that bolster that protocol. This chart was created by Michelle Rivard Parks, Tribal Judicial Institute, for the National Criminal Justice Training Center of Fox Valley Technical College.

Codes	Policies	Protocols
<ul style="list-style-type: none"><li>• Formal and legally enforceable rules to regulate, conduct, or establish prohibited conduct</li><li>• Enforceable by government</li></ul>	<ul style="list-style-type: none"><li>• Formal statement of applicable purpose, standards, and process</li><li>• Enforceable (usually by agency)</li></ul>	<ul style="list-style-type: none"><li>• Formal Steps to help effectuate code and policy</li><li>• Help to ensure consistent responses</li><li>• Provide guidance to practitioners</li><li>• Not generally legally enforceable (but may have legal implications)</li></ul>

Written protocols tend to provide more uniformity and stability in application and implementation, which makes them important vehicles to achieving your law enforcement agency's goals and acquiring victim's trust. Together, policies and procedures provide the guidance and the steps needed to make impacts in the lives of your community members and your Tribal Nation.

Policies will need to align with:

- Applicable mandates in Tribal code (if any)
- Community values and norms
- Mission and Purpose of the agency/program
- Existing resources
- Funding source (i.e. grant requirements including grant special conditions)

Procedures, or a set of procedures often called a protocol, define a set of decision-making steps based on established policies. The procedures are an extension of your work that effectuates the developed policies.

In this section, the co-authors offer background on protocol development processes, and discuss the role of community-based victim advocate, law enforcement officer, and collaboration in a Tribal sexual assault response from an advocate lens. The co-authors offer these insights given their personal and professional experiences in grassroots advocacy and Tribal justice systems. Their insights are complemented by suggestions from the International Association of Chiefs of Police Sexual Assault Guidelines.

## **A. Philosophy of Protocol Development and Example Protocol Language**

The co-authors of this Companion Guide suggest reviewing and customizing the following protocol development approach to assist Tribal law enforcement agencies in drafting a sexual assault protocol.

This model focuses on creating a community-specific protocol for improving a community's response to crime and its victims. The Eight-Step Model for Developing Protocol known as the Protocol Development Cycle, as developed by Anita B. Boles and John C. Patterson and explained in *Improving Community Response to Crime Victims: An Eight-Step Model for Developing Protocol* (1997) has been successfully utilized by other communities. TLPI has set this cycle out in nine steps because the process should be reevaluated at designated times and adjustments to the protocols (and if needed, policies) should be made after each re-evaluation. This circular process promotes current, promising practice for the protocols as new information and data becomes evident.

1. Inventory of Existing Services
2. Victim Experience Survey
3. Community Needs Assessment
4. Writing Protocol
5. Adopt Protocol and Renew Interagency Agreements
6. Training
7. Monitoring
8. Evaluation
9. Repeat steps at regular identified intervals

Developing a protocol for your law enforcement agency may be an internal development process, that you may decide to share or not. Remember, an internal agency protocol may be discoverable in both civil and criminal actions. Your agency may also contribute to the development of a multi-disciplinary response to sexual assault. Your community may choose to organize the community response as a Sexual Assault Response Team (SART) for example. Those types of community responses may also involve an inter-agency protocol development process that law enforcement would be a key partner in. The above development process may assist in those inter-agency protocol development exercises too.

For more information on SART development, check out: [Sexual Assault Response Teams: Resource Guide for the Development of a Sexual Assault Response Team \(SART\) in Tribal Communities](#) (2008)

In addition to the model protocol and protocol workbook provided in the [Tribal Law Enforcement Protocol Resource: Sexual Assault, Guide for Drafting or Revising Tribal Law Enforcement Agency's Protocols Responding to Sexual Assault](#) (2008), the [International Association of Chiefs of Police Sexual Assault Guidelines](#) provide samples of protocol language. Suggestions, recommendations, and protocol guidelines from the IACP are woven in throughout the discussion of the role of the advocate, law enforcement, and collaboration in a Tribal sexual assault response. The acknowledgement in the International Association of Chiefs of Police Sexual Assault Guidelines states:

*“Content recommendations were submitted by a multidisciplinary group of subject matter experts including prosecutors, law enforcement, advocates, sexual assault nurse examiners, and national training and technical assistance providers. Departments are encouraged to use this document to establish department policy and training content customized to their agency and jurisdiction. Every effort has been made by the IACP National Law Enforcement Leadership Initiative on Violence Against Women staff and partner subject matter experts to ensure that this document incorporates the most current information and contemporary professional judgment on this issue. However, each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions and collective bargaining agreements that must be considered when developing policy and protocols. In addition, the formulation of specific agency policies and training content must take into account local political and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities, among other factors.” (p. 41)*

Lastly, the Additional Resources section of this Companion Guide contains links to other law enforcement agency protocols, and SART protocols for your reference. The Additional Resources section includes a OVC report, *Developing and Implementing a Response to Sexual Assault in Tribal Communities: A Summary of Suggestions from the National Roundtable Discussion on Sexual Assault in Indian Country*, (2016) which contains response protocol suggestions for law enforcement based on a breakout session for law enforcement and prosecution. Some of those suggestions<sup>[39]</sup> include:

- Consider including a no arrest provision for sexual assault victims identified in the course of a call on another matter
- Tribal law enforcement officers should respond to a delayed report of sexual assault in the same way that they would to an immediate outcry (follow established protocol)
- The response protocol should address the process of reading a suspect their Miranda rights. Particularly in cases that have the potential to go to federal prosecution (although also pertinent in cases prosecuted by the state), roundtable participants noted that Tribal law enforcement should use Indian Country Civil Rights Act Miranda rights to ensure that suspects' statements can be used as evidence in cases (rather than getting thrown out of court for violating fifth amendment rights).
- Include Tribal victim services during first response to support victims
- Interview protocols should be established for where, when, and by whom victims will be questioned after a sexual assault. Protocols need to be different for children/adolescents, adults, and adults with cognitive disabilities

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[39] U.S. Office for Victims of Crime, *Developing and Implementing a Response to Sexual Assault in Tribal Communities: A Summary of Suggestions from the National Roundtable Discussion on Sexual Assault in Indian Country*, (2016) p. 25-26  
[https://www.ovcttac.gov/downloads/tribalvictimassistance/SANE\\_SART\\_Roundtable\\_508c\\_060617\\_DM.pdf](https://www.ovcttac.gov/downloads/tribalvictimassistance/SANE_SART_Roundtable_508c_060617_DM.pdf)

- Tribal law enforcement officers should be trained on and use a checklist of minimal facts questions to ask in sexual assault investigations to help avoid victim blaming and bias in the report writing process. Law enforcement response protocols should also discourage asking victims to write a statement about what happened.
- Use the office of professional standards at Tribal law enforcement agencies to help set standards for sexual assault training and response
- Law enforcement officers responding to domestic violence calls should screen for sexual assault

Overall, building infrastructure by prioritizing development of Tribal sexual assault protocols in addition to Tribal sexual assault codes, and policies was identified as a strategy by roundtable participants to address sexual assault in Indian country.<sup>[40]</sup>

## **B. Role of Sexual Assault Advocate**

Generally, the role of a Tribal, grassroots community-based advocate is to be a good relative. The grassroots advocacy movement was started by Native women around kitchen tables and from front porches. Native women recognized that many of their relatives were being beaten and raped by their partners, others from within the community and others from outside their community. They recognized the need to develop culturally appropriate responses for their relatives where they opened their homes to shelter and embrace those impacted by violence and worked to create systemic change to hold offenders accountable. Years later the following definition was created by a group of Native women advocates:

*“To act as the **biased** supporter of women; advocating for the **expressed interests and safety** of women (and their children) including safe space and other resources to regain control over their lives. To provide leadership and expertise based on women’s*

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[40] Ibid., p. 4.

*experiences within justice, law enforcement, social service and medical systems. To prioritize women's safety and offender accountability in all aspects of the work including maintaining confidentiality." - Mending the Sacred Hoop, S.T.O.P. Violence Against Indian Women Technical Assistance, Feb. 1996*

Sexual assault victims may enter the system through many different doorways such as by:

- Calling 911 or the non-emergency line at local police department;
- Walking into an advocacy program office
- Seeking medical attention at local IHS facility or clinic
- Sharing with friend or relative, school personnel, employer

Whatever doorway the victim enters, safety should always be the first matter of concern to be addressed especially during the crisis intervention and initial contact. Once initial safety assessments are made, it is important to continue to address ongoing safety needs by asking the victim if they would like to do some safety planning. Law enforcement can support advocates in prioritizing safety by:

- Keeping open and consistent communication with the victim and the advocate
- Drafting strong reports
- Maintaining a victim-centered approach throughout the investigation

***A sexual assault advocate has many roles including but not limited to the following:***

- Maintaining confidentiality is cornerstone of safety; have clear confidentiality policies and procedures
- Know the resources in advocates community, to take time to research programs, meet service providers, know their approach to working with victims of crime before referring victims
- Providing emotional support to victims by validating the feelings the victim is experiencing, believing what the victim is sharing

- Providing information on available options such as filing a police report and explaining to the victim what to expect and continued legal advocacy with investigation and possible prosecution of the perpetrator
- Providing information and support as the victims obtains a forensic examination
- Validating what the victim is experiencing
- Providing accompaniment, transportation, emotional support to the victim as they access services
- Working with and providing support to family members, spouse, friend/s of the victim
- Provide longer term support after the immediate crisis stage
- Provide spiritual support as needed or appropriate such as smudging where appropriate
- Community Education, Social, and Systems Change Work

### ***Advocates Role While Victim Seeking Medical Attention, Obtaining a Forensic Examination***

Sexual assault advocates can be a good source of support for victims as they obtain this exam. The exam is often seen as a very invasive procedure when they have already experienced an assault that was so invasive to their privacy, their sense of safety, their well-being and their personal boundaries. Advocates can provide the following to help victims during this process:

- It is the victim's choice whether you will be in the room during the examination.
- If advocate is meeting the victim for the first time in the location where forensic exam is being done, introduce oneself to victim and ask consent to be with the victim. Everything being done at anytime should be at the request or by consent of the victim after they've received accurate information about their options.
- Explain the process briefly such as who will be performing the exam and that they are often called "Sexual Assault Nurse Examiners" SANE's and that they are generally well trained to be sensitive to victims of sexual assault.

- Inform the victim that the nurse and perhaps the law enforcement officer may be asking sensitive questions and the victim can ask to stop at any time to gain composure, if they're confused, have a question.
- Check on the victims comfort such as if they have pain, are they cold, do they need a blanket, do they need something to drink however make sure they will not having their mouth swabbed to gather evidence there first.
- Stand at the head of the examining table near patients' head.
- Inform victims of their right to consent or refuse any type of services.
- While the examination is taking place, advocate can gently converse with the victim to get their mind off the discomfort of the exam perhaps asking about if they have children, pets, plans for the weekend, the weather.
- Provide support to any family, friends that may be accompanying the victim.
- Work collaboratively in cooperation with the SANE and with law enforcement.

#### *Discharge of patient or admission*

- Address transportation home, immediate and long term.
- Address safety needs (home security, court no contact orders)
- Follow up care as needed

### **The International Association of Chiefs of Police Sexual Assault Guidelines define Victim Advocates as:**

*Victim Advocates: provide counseling, advocacy, referrals, resources and information, and support. They may also act as liaisons with SANEs, law enforcement, and other criminal justice members throughout the investigation and adjudication process.*

When working with a grassroots victim advocate, the **International Association of Chiefs of Police Sexual Assault Guidelines** recommend:

- **Victim Assistance** - Contact a victim advocate as soon as practicable. This will ensure the victim is assisted throughout the reporting and investigative processes. The victim may wish to have a family member, friend, or other support with them throughout the process.
- **Victim Assistance** - Because conversations with system or community advocates may be privileged, investigating officers must understand that unless there is a written waiver, a victim advocate cannot disclose information from the victim, even if it would significantly impact the investigation or prosecution of the case.
- **Preliminary Victim Interview** – The first responding officer or the investigating officer to contact a victim advocate as soon as possible. Victims of sexual assault should be given the opportunity to make their own decisions about advocate involvement. If the victim declines assistance from an advocate, the advocate and/or investigator should document this and provide the victim with written referrals for community resources specifically designed to help victims of sexual assault.
- **Preliminary Victim Interview** – Law enforcement should notify the victim advocate of an special needs of the victim including around communication, mobility, cognitive ability, cultural differences and other factors that may impact the victim’s ability and willingness to provide details.
- **Follow-Up Victim Interview** - The investigating officer should coordinate with relevant agencies, assistance organizations, service providers, and/or sexual assault response professionals to address the needs of the victim and to discuss the best means for keeping the victim informed. Victim advocates or rape crisis counselors can be particularly helpful to both the victim and the investigating officer by providing the victim with the emotional support and information needed to make informed decisions throughout the interview process.
- **Follow-Up Victim Interview** - Encourage the victim to work with an advocate to continually monitor their safety. Assist in safety planning with the victim.

- **Sexual Assault Medical Forensic Examinations** – Investigating officer should address any special needs of the victim, such as communication or mobility, and notify the victim advocate of them.
- **Sexual Assault Medical Forensic Examinations** – With the victim’s consent, notify a victim advocate when a forensic examination is to be conducted so that he or she can provide support.
- **Efforts to Encourage Reporting and Enhance Public Trust and Transparency** - Law enforcement should consider partnering with community organizations and advocates to create a more supportive atmosphere for victims throughout the reporting and investigation process (Example: SART development)

The role of a victim advocate should be respected by law enforcement and other criminal justice disciplines throughout the reporting, investigation, and prosecution of a sexual assault. As a biased supporter of the victim, a grassroots advocate can help ensure a victim-centered and trauma-informed response.

### C. Role of Law Enforcement Officer

*“The complexities of sexual assault warrant the full attention of law enforcement and the criminal justice system. Law enforcement have the ability to support victims, hold offenders accountable, and prevent future acts of violence. Creating, implementing, and training on a comprehensive department policy that addresses sexual assault ensures that an agency is prepared to effectively respond to and successfully prepare these complex cases, and reinforces the safety of the community it serves.”* – **International Association of Chiefs of Police Sexual Assault Guidelines, Executive Summary**

As discussed above, victims enter the criminal justice systems through many doorways and one of those doorways is contacting a law enforcement agency.

Once that contact has been made, the victim is faced with a myriad of questions, often sexually explicit and embarrassing. In many Tribal communities sexually explicit language is not shared across genders. The victim is also faced with the decision to make a police report. This can be an extremely difficult decision. Victim may find it difficult due to many reasons including but not limited to:

- Lack of trust in the criminal justice system because they have heard or experienced that nothing will be done or that the perpetrator will not receive consequences
- Delayed report
- Fear of treatment due to past negative experience with law enforcement
- Fear of the perpetrator because they may have been threatened by the perpetrator if the victim reports to law enforcement
- Confusion on the part of the victim whether what happened was even sexual assault because the victim may be believing some of the myths around sexual assault such as the victim caused the abuse/violence, that no one will believe the victim, that it was consensual sex etc.

Victims may feel they are taking a huge risk by reporting. Perpetrator or perpetrator's family, may have threatened to harm them, kill them, kill themselves, victim's family/children. The victim may fear arrest for outstanding warrants often for misdemeanor offenses. They may fear having their children taken from them - feelings caused by historic trauma and distrust. Once reported, the victim may change their minds about moving forward for any of these reasons or other reasons. It is good practice to:

- Support the victim, reminding them the crime was not their fault
- Inform victim that their safety is important and first priority
- Inform victim that the report will remain open should the victim change their minds and want to move forward or if the victim has additional information for investigators

- Inform victim they should feel free to call law enforcement if they have any questions, concerns

### ***Dispatch***

Considerations for law enforcement initial contact via a 911 call:

- The primary concern when responding to callers is to assess victim safety. Inquire about location of suspect, and if suspect armed. The dispatch operator must recognize that in cases where the suspect is still present, it may not be safe for the victim to remain on the phone with the telecommunicator and that other safety options should be suggested.
- Assess the victim's need for medical attention, any injuries, or ask if the victim would like to be transported to a hospital
- Dispatch and responding officers triage as a priority call regardless of when assault occurred, regardless of how many times they have gone to a residence, and regardless of what condition the victim might be in
- Assess need for culturally specific advocate (This may require some prior collaborative work between law enforcement and the culturally specific advocate, for law enforcement to be aware of the advocacy response protocols and advocate availability)
- Confidentiality - If there is hesitancy about involvement with law enforcement, victim may be concerned about confidentiality and the community learning about what happened. If it seems appropriate, it may be helpful to ask the victim if they have concerns about that and reassure victim that advocacy services are confidential.

### ***At the scene***

Considerations for law enforcement at the scene of a reported sexual assault:

- Safety of the victim is first priority. Do a safety assessment. Check with victim about safety concerns, and inquire about perpetrator location and common behaviors.

- If the victim chooses to make a police report, it is good practice to inform the victim of the availability of a victim advocate. The sooner this happens the better. Advocates are experienced with the reporting process and can provide support, answer questions, provide additional resources such as transportation, accompaniment to future meetings, and hearings. In some instances, the advocacy program may have 24-hour crisis intervention that may be helpful to victims.
- Regardless of the situation, victims must be supported and included in the criminal justice process on their own terms and their choices must be supported.
- Coordinating with victim advocate – asking victim if victim wants an advocate

### ***Investigation & Prosecution***

Considerations for law enforcement throughout investigation and prosecution:

- Empower the victim with information regarding the investigation where possible
- Allow for information sharing with a victim advocate. Your agency may consider establishing a memorandum of agreement or understanding to facilitate the sharing of information
  - Victim advocates can provide legal advocacy to support the victim in navigating the criminal justice system from initial reporting of the assault through investigation and prosecution. A victim advocate can help ensure the victim receives timely and regular updates regarding the status of her case.
- Understand that there is no case without the victim, build trust and rapport with the victim throughout the process by keeping them informed and abiding by their informed decisions
- Continue to prioritize victim safety throughout and collaborate with the victim and victim advocate around safety planning

## ***Law Enforcement Considerations for VAWA 2022 Prosecutions of Non-Indian Offenders***

Earlier in the Companion Guide, VAWA 2022 and the covered crime of “sexual violence” was discussed. Tribal law enforcement may have additional issues to think about on policy and protocol development if their Tribe is exercising special Tribal criminal jurisdiction. In the case of a sexual assault protocol, we have provided a discussion of law enforcement considerations regarding the covered crime of “sexual violence.”

VAWA 2022 was enacted and now contains 9 covered crimes including “sexual violence.” The federal law provides the jurisdictional hooks to bring a Tribal crime into the realm of a covered crime. In some instances, Congress has provided jurisdictional requirements to the prosecution. For example, domestic and dating violence covered crimes require an intimate relationship as defined in the statute. All but two of the covered crimes require an Indian victim. Obstruction of justice and assault of Tribal justice personnel do not require an Indian victim. All of the covered crimes must have occurred in the Indian country of the Tribe that is prosecuting.

### *Jurisdictional Considerations of the VAWA 2022 Covered Crime of Sexual Violence:*

1. Victim must be an Indian
  2. Non-Indian must commit a non-consensual sex act or contact
  3. The non-consensual act or contact must violate the Tribal criminal code of the Tribe that is prosecuting
    - a. Elements of the crime will be heavily driven by the Tribal code
  4. The non-consensual act or contact must have occurred within the Indian country of the Tribe that is prosecuting
- Congress includes acts where the victim lacks capacity to consent. Arguably, this includes a lack of capacity because of age, cognitive impairments and substance/alcohol abuse. The Tribal code may shed some light on age and other lack of capacity indicators.

Law enforcement should consider gathering the above information during initial interviews and investigations when safe and prudent to do so. Recalling these are the jurisdictional requirements utilized to open the door to the Tribal criminal court to prosecute the non-Indian offender. Next, the prosecutor must plead and prove the elements of the Tribal crime selected to fit within the covered crime of sexual violence. To assist the prosecutor in proving those elements, law enforcement must also gather information to support the elements of the Tribal criminal code that was violated. Knowledge and review of the Tribal code for a crime of sexual violence will be essential for Tribal law enforcement officers working for Tribes implementing special Tribal criminal jurisdiction.

#### **D. Role of Collaboration**

Collaboration is essential to a coordinated and consistent Tribal response to sexual assault. In many ways, collaboration can be seen as a common traditional value for many Tribal communities. The idea of everyone working together for a common goal and for the greater good of the people is centuries old.

Due to jurisdictional complexities in Indian country, a collaborative response to someone who is sexually assault often involves collaboration across jurisdictions. Primarily, those collaborations are with the state and federal government thanks to statutes like the Major Crimes Act and P.L. 280 as discussed earlier in the Tribal Criminal Jurisdiction section of this Companion Guide. Thus, building relationships between the Tribal law enforcement agency and state and federal partners should be considered and prioritized. If effective collaboration with state and federal partners seems untenable, a Tribe must then consider what other ways can a Tribal community response be bolstered and supported. Please see earlier discussion on addressing sexual assault when lacking a Tribal sexual assault code.

The Office for Victims of Crime report *Developing and Implementing a Response to Sexual Assault in Tribal Communities: A Summary of Suggestions from the National Roundtable Discussion on Sexual Assault in Indian Country*, (2016) identified collaboration as an strategy<sup>[41]</sup> to address sexual assault in Indian country:

- Promote partnerships to support coordinated response: Urge the leadership of Tribal and nontribal agencies involved in sexual assault response in AI/AN communities to support the establishment of multidisciplinary teams (MDT) for child abuse cases and sexual assault response teams (SART), with active and consistent participation in MDTs and SARTs by key agency staff. Tribes are encouraged to think expansively about collaborative partners and consider how to leverage resources to address the problem of sexual violence comprehensively in the community, including and beyond MDTs and SARTs. It is important to note that the burden of ensuring culturally relevant interventions should not fall on the leaders of Tribal agencies alone, but should be shared among the leaders of responding agencies from all jurisdictions involved in response.

The key to any collaborative response to sexual assault is centering the victim. Despite the levels of communication and coordination that need to happen, nothing is more important than keeping the victim safe and honoring her decisions.

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[41] *Developing and Implementing*, p. 4.



A more local focus on collaboration points to the importance of having a strong relationship between law enforcement and community-based advocates. Historically, there have been misunderstandings about each other's roles, and different approaches to handling cases and supporting victims that result in collaboration challenges which we discussed earlier in the Companion Guide. There is now a growing and documented understanding that a healthy relationship between law enforcement agencies and community-based victim advocates is pivotal to a sexual assault response. For more discussion on this topic, please see the following resources from RTI International, Sexual Assault Kit Initiative:

- [Advocacy and Investigation: Identifying the Unique and Complementary Roles in Sexual Assault Response](#) (n.d.)

- Victim Advocates and Law Enforcement: A Critical Partnership for Victim Support and Healing (n.d.)

To foster collaboration, the **International Association of Chiefs of Police Sexual Assault Guidelines** state a primary objective of a sexual assault policy is to:

- ***Encourage a coordinated community response and ensure all victims are offered free and confidential support, social service referrals, and information from a trained sexual assault victim advocate.***

Additionally, the **International Association of Chiefs of Police Sexual Assault Guidelines** highlight the opportunity for collaboration with the victim and others like prosecutors, dispatch, and local community organizations:

- ***Initial Officer Response*** – Assisting the Victim – As part of a community-coordinated response, work with local support agencies to develop information and resources that can be shared with victims of sexual assault. National agencies such as the including the Rape, Abuse, and Incest National Network (RAINN) National Sexual Assault Online Hotline (<https://ohl.rainn.org/online/> or 1-800-656-HOPE) are also helpful. Operators can connect callers with the rape crisis center closest to the victim’s location.
- ***Victim Interviews*** – Follow-up Interview – The investigating officer should coordinate with relevant agencies, assistance organizations, service providers, and/or sexual assault response professionals to address the needs of the victim and to discuss the best means for keeping the victim informed. Victim advocates or rape crisis counselors can be particularly helpful to both the victim and the investigating officer by providing the victim with the emotional support and information needed to make informed decisions throughout the interview process.

- **Victim Interviews** – At the conclusion of the follow-up interview, the Investigator shall:
  - Present the complete case file, including forensic results, as soon as available to the prosecuting attorney for review, if jurisdictionally appropriate. Work collaboratively with the prosecutor’s office to develop the case.
  - Continue to support the victim throughout the process. Apprise him or her of future investigative and prosecutorial activities that may require their involvement.
- **Dispatcher or Call-Taker Response** - Sexual assault crimes may involve more than one jurisdiction; call takers should follow agency policy concerning multi-jurisdictional case coordination.
- **Sexual Assault Medical Forensic Examinations** – Coordination with the Forensic Examiner – Responding officers shall coordinate with other professionals such as forensic examiners and criminalists to determine whether a forensic examination is indicated.
- **Additional Topics for Consideration** - Departments are encouraged to collaborate with local community organizations to develop comprehensive protocols to effectively and thoroughly address the needs of various populations.

Lastly, additional collaboration practices as well as policies and protocol insight can be found in International Association of Chiefs of Police’s (IACP) [Identifying and Incorporating Core Principles of Victim-Centered and Trauma-Informed Response: Practices for Law Enforcement](#) (2024). In this resource, IACP provides collaboration and partnerships recommendations for different members of law enforcement (First Responders, Evidence Collection Teams, Investigators, Supervisors, Agencies). TLPI has compiled all of the “collaboration and partnerships” practice recommendations:

- **First responders** – Familiarize yourself with information and resources to provide effective referrals to community-based organizations or other available systems-based assistance.

- **First responders** – Establish relationships with the community to better understand their needs and concerns. By engaging with community members and listening to their feedback, law enforcement can tailor their response to address local issues effectively.
- **Evidence Collection Teams** – Make every effort to have victim advocates present during evidence collection and other interactions that may be especially difficult for victims and co-victims (e.g., violent crime scene processing, child death investigations, gunshot residue testing, forensic examinations that include photography of bodily injuries).
- **Evidence Collection Teams** – When possible, incorporate victim advocates during property return processes to ensure appropriate support is available,
- **Investigators** – Collaborate early and often with victim advocates to identify and address victims’ and co-victims’ needs. Ensure resources and referrals are available and connections with victim advocates are made as soon as possible.
- **Investigators** – Involve victim advocates regardless of whether victims and co-victims decide to engage in investigative processes. Victim advocates can help address victims’ and co-victims’ needs that are beyond the scope of the investigator’s role.
- **Investigators** – When multiple agencies are involved in the investigative process, such as in mass casualty events, coordinate to pre-establish interview and investigative protocols to minimize the impact on victims and co-victims.
- **Supervisors** – Strengthen partnerships with community organizations and victim service providers to ensure seamless coordination and provision of support services to victims and co-victims.
- **Supervisors** – Collaborate with organizations that serve communities of color; individuals with disabilities; Deaf or hard of hearing individuals; older adults; those with limited English proficiency; and lesbian, gay, bisexual, transgender, and queer (LGBTQ+) communities.

- **Agencies** – Encourage personnel to participate in multidisciplinary teams related to their responsibilities (e.g., child abuse, intimate partner violence) and promote victim-centered, trauma-informed, and culturally responsive practices during team interactions.
- **Agencies** – Develop formal roles, responsibilities, and agreements (e.g., memoranda of understanding) to ensure both system- and community-based victim advocates can support victims.

## IV. Appendix A – International Association of Chiefs of Police Victim-Centered and Trauma-Informed Response Policies and Protocol Recommendations

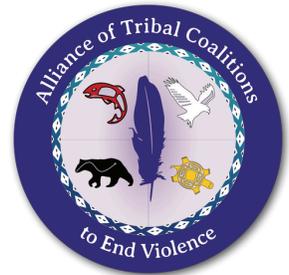
The following policies and protocols recommendations are pulled from the International Association of Chiefs of Police, *Identifying and Incorporating Core Principles of Victim-Centered and Trauma-Informed Response: Practices for Law Enforcement*, (2024)

Washington, DC: Office of Community Oriented Policing Services.

- **First responders** – Offer feedback to agency policy and protocols based on experience and engagement with victims.
- **Evidence Collection Teams** – Establish policies on returning personal property to victims and co-victims.
- **Evidence Collection Teams** – Establish policies specifying circumstances under which law enforcement may obtain photographs of victims and co-victims without the support of forensic examiners or trained crime scene specialists.
- **Investigators** – Consider the role victim advocates can play in agencies' established policies and practices for follow-up investigative activities such as controlled communications.
- **Investigators** – Policies should address how to provide victims with the details needed to make an informed decision about participating in follow-up activities and any implications their decision may have.

- **Investigators** — When suspending or closing cases, policies should establish communication expectations for informing victims of the following steps, regardless of the outcome. These steps may include providing supportive hand-offs to other justice system partners (e.g., prosecution) and community-based partners.
- **Supervisors** – Incorporate behavioral expectations for victim interactions into performance review practices for all personnel.
- **Supervisors** – Highlight examples of effective victim-centered, trauma-informed, and culturally responsive practice in agency newsletters, roll-call briefings, personnel meetings, and recognition ceremonies.
- **Supervisors** – Provide opportunities for personnel to discuss difficult experiences in their work with peers or supervisors.
- **Supervisors** – Set expectations and offer options for staff wellness support that enhance their ability to provide optimal victim-centered, culturally responsive, and trauma-informed services.
- **Agencies** – Establish agency expectations and standards for developing law enforcement–based victim advocacy programs and integrating victim advocates throughout investigative processes.

# NTCSA Project Partners



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