



COALITION TO STOP VIOLENCE AGAINST NATIVE WOMEN
2026 BREAKING CYCLES OF VIOLENCE CONFERENCE
MAPPING VICTIM RIGHTS TO TRIBAL LAWS, PROGRAM POLICIES, AND SERVICES



**BREAKING CYCLES
OF VIOLENCE CONFERENCE**

**Mapping Victim Rights to Tribal
Laws, Program Policies, and Services**



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TRIBAL SOVEREIGNTY
**Upholding Victim Rights through Tribal
Codes and Policy**

<p>American Indian Development Associates, LLC</p> <p>AIDA Mission</p> <p>“To build the capacity of tribal communities to address crime, violence, and victimization issues and problems by assisting tribes, state, and federal governments to develop comprehensive, system-wide responses to these problems.”</p> 	<p>AIDA specializes in the following areas:</p> <ul style="list-style-type: none">❖ Training and technical assistance to Tribes, Tribal programs, and organizations nationwide.❖ Research, Evaluation, and Needs Assessments❖ Tribal Capacity Building❖ Tribal Justice, Allied Service Systems Development
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Sovereignty Definition

Understood in jurisprudence as the full right and **power** of a governing body to govern itself without any interference from outside sources or bodies.



Tribal Sovereignty=Self-Governing

The authority of tribes to make laws and be governed by them is limited only by Federal regulations.

1. Tribes have the authority to regulate all internal affairs.
2. The State has no authority to regulate activities on reservations without a Federal grant of power.
 - Public Law 280 gave concurrent jurisdiction to states.
3. Congress has the authority to limit tribal sovereignty, and general laws of Congress apply to Indian reservations and jurisdictions.

Tribal Self-Governance

- Tribal governance combines the tribes' sovereign powers with U.S. Congressional acts, i.e., treaties, statutes, and public laws.
- Incorporates tribal culture, history, social interactions, laws, jurisdiction, and sovereignty.
- Determine internal systems:
 - Governance structures,
 - Pass and enforce laws,
 - Provide multiple programs and services, and
 - Build and maintain various infrastructures, i.e., roads, public buildings, etc.

Elements of Governance

- **Sovereignty**
- **Authority**
- **Responsibility**
- **Jurisdiction**
- **Laws and Rules**
- **Government-to-**



Government Relationships

Tribal Authority

All tribal governments have authority from two separate sources:

Inherent Authority:

- 👉 Tribal authority existed before the formation of the U.S. government.
- 👉 All tribes have Inherent Sovereignty.
- 👉 No one or no other country gave this authority to us!



Delegated Authority:

- ❖ The additional authority granted to tribal governments by the U.S. government.
- ❖ Delegated authority is generally granted by congressional acts:
 - Indian Civil Rights Act (ICRA),
 - Tribal Law and Order Act (TLOA),
 - Violence Against Women Act (VAWA), etc.
 - These laws refer to sentencing authority, offender rights, victim rights, and jurisdiction over non-Indians.

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Tribal Governmental Role

Tribal Leadership

- Make the laws and policies
- Execute the laws
- Create programs
 - Law Enforcement
 - Courts
 - Prosecution
 - Victim Services

Tribal Justice System

- Provide public safety by deterring and preventing crime
- Prosecuting offenders
- Protecting victims
- Incarcerating individuals who commit crime



Tribal courts perform a function of government and are bestowed with the authority to interpret tribal laws and apply them through jurisdiction over people, subject matter, and territory.



VICTIM-RELATED LAWS
Mapping Victim Rights to Tribal Codes

Roles Defined by Tribal Laws

Tribal Justice Systems

- Police or Law Enforcement
- Courts Systems
- Prosecution
- Public Defense
- Corrections
- Community Supervision

Allied Service Partners

- ❖ Social Services
- ❖ Victim Services
- ❖ Behavioral Health
- ❖ Health Systems
- ❖ Education



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Victim's Role and Responsibility

Victim Responsibilities

To be guaranteed full rights under the Constitutional Bill of Rights, victims must:

- ✓ Promptly report the crime to the police.
- ✓ Cooperate with law enforcement officials investigating the crime.
- ✓ Testify at the Defendant's trial.
- ✓ Tell authorities if your address changes.



Role in Criminal Case

- The government—whether tribal, state, or federal—oversees the case, and the victim testifies as a prosecution witness.

Role Civil Case

- Victims make crucial decisions that shape the litigation process, including whether to file a lawsuit, accept a settlement, or proceed to trial.

Designate a Representative

- Identify a spokesperson unless the victim is a child.

Mapping Victim Rights to Laws Necessary

Victim Service Organizations

- Provides clarity for Service Providers about who has laws and policies, who doesn't, when to use them, and why.
- It helps Providers navigate multiple jurisdictions and systems.
- Identify rights within Federal, State, and Tribal Systems and **ensure rights are enforced.**
- Identify gaps in tribal laws and policies that can be improved.

Individuals and Families

- Empowered by knowing their rights.
- It helps them understand their rights in multiple systems.
- It enables them to have their voice heard before, during, and after critical criminal justice investigations and proceedings.



Federal Legislation

Federal Laws

- General Crimes Act of 1817 (GCA) (18 U.S.C. § 1152)
- Major Crimes Act of 1885 (MCA) (18 U.S.C. § 1153)
- Public Law 83-280 of 1953 (18 U.S.C. § 1162, 28 U.S.C. § 1360) (PL 280)
- Indian Civil Rights Act of 1968 (ICRA)
- Indian Child Welfare Act of 1978 (ICWA)
- Tribal Law and Order Act of 2010 (TLOA)
- Reauthorizations of the Violence Against Women Act of 2013 and 2022 (VAWA)



Supreme Court Decisions

Criminal Jurisdiction

- Ex Parte Crow Dog (1883) 109 U.S. 556.
- Oliphant v. Squamish (1978) 435 U.S. 191.
- Duro v. Reina (1990) 495 U.S. 676.
- U.S. v. Lara (2004) 541 U.S. 193.
- Oklahoma v. Castro-Huerta (2022) 142 S. Ct. 2486.


Civil Jurisdiction

- Williams v. Lee (1959) 358 U.S. 217.
- Montana v. U.S. (1981) 450 U.S. 544.
- Dollar General v. Mississippi Band of Choctaw Indians (2016) 136 S. Ct. 2159.



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Major Crimes Act Offenses

- | | | |
|---|---|--|
| <ol style="list-style-type: none"> 1. Murder 2. Manslaughter 3. Kidnapping 4. Maiming 5. A felony under chapter 109A (i.e., sexual abuse) 6. Incest* 7. A felony assault under section 113 (e.g., assault with intent to commit murder or assault with a dangerous weapon) |  | <ol style="list-style-type: none"> 8. An assault against an individual who has not attained the age of 16 years 9. Felony child abuse or neglect* 10. Arson 11. Burglary* 12. Robbery 13. A felony under section 661 of this title (i.e., larceny) 14. Sexual Assault |
|---|---|--|

*Not defined in federal code

Categories of Crimes in Codes

Violent Crimes & Homicide: Murder, voluntary/involuntary manslaughter, kidnapping, and armed robbery.

Assault and Battery: Aggravated assault, aggravated battery, and dangerous use of explosives.


Domestic & Family Violence: Aggravated assault/battery against a household member, and general battery against a household member.

Sexual Assault & Stalking: Criminal sexual penetration (rape), criminal sexual contact of a minor, stalking, human trafficking, and aggravated stalking.

Other Felonies: Arson resulting in bodily injury, aggravated arson, homicide by vehicle, and great bodily injury by vehicle.



Crimes Implicating Victim's Rights

- | | | |
|---|---|--|
| <ul style="list-style-type: none"> ✓ Determine which types of crimes will trigger the application of victims' rights statutes. ✓ Qualifying crimes can vary widely by jurisdiction (e.g., some felonies, all felonies, certain misdemeanors, all misdemeanors, adult crimes only, or violent juvenile offenses). ✓ The decision should reflect the customs, beliefs, and specific needs of the tribal community. |  | <ul style="list-style-type: none"> ✓ The scope of qualifying crimes must align with the definition of "victim" in the statutes. ✓ If "victim" includes those harmed by domestic violence, the covered crimes must encompass all relevant domestic-violence offenses (misdemeanor or felony under tribal law). ✓ Thoroughly review the tribal code to ensure all necessary crimes are included so that all designated "victims" are protected. |
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Laws Requiring Recognition and Enforcement of External Judgments and Orders

**Full Faith and Credit (FFC):
Mandated Recognition**

- **Legal Mandate:** While tribes are not "states" under the Constitution's Full Faith and Credit Clause, federal laws (e.g., VAWA, ICWA) explicitly require federal, state, and tribal courts to enforce specific tribal court orders.
- **Requirements:** The tribal order must be issued by a court with proper jurisdiction and provide due process (notice and opportunity to be heard).
- **Scope:** Extends to domestic violence protection orders, child custody, and child support enforcement, custody, or supervised visitation.

**Comity :
Voluntary**

- Comity refers to courts of one state or jurisdiction respecting the laws and judicial decisions of other jurisdictions – whether tribal, state, federal, or international.
- Not as a matter of obligation but out of deference and mutual respect.





VICTIM-RELATED LAWS
Mapping Victim Rights to Program Policies

Victim Rights and Services

- ❖ **Mandatory Federal Services**
- ❖ **Mandatory Federal Rights**



Why start with Federal directives?

- They are nationwide regulations that require all levels of government—state, tribal, and county—to follow or implement them.
- Tribes often refer to federal laws as a reference when their own codes are silent.

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Select Federal Victim Rights Legislation

Protecting Victims' Rights:

- | | |
|--|--|
| <p>1978: Indian Child Welfare Act</p> <p>1982: Victim and Witness Protection Act</p> <p>1984: Victims of Crime Act</p> <p>1985: Children's Justice Act*</p> <p>1990: Victims' Rights and Restitution Act</p> <p>1994: Violence Against Women Act*</p> <p>1996: Mandatory Victims' Restitution Act</p> <p>2000: Trafficking Victims Protection Act</p> <p>2004: Justice For All Act (Crime Victims' Rights Act)</p> | <p>2010: Tribal Law and Order Act</p> <p>2016: Native American Children's Safety Act</p> <p>2019: Victim Compensation Fund Act</p> <p>2020: Not Invisible Act of 2019*</p> <p>2021: VOCA Fix to Sustain the Crime Victims Fund Act of 2021</p> <p>➤ Every state has a statutory victims' bill of rights, laws or rules, and 32 to 33 have constitutional provisions.</p> <p>➤ Many Tribes are including victim rights in their codes and constitutions.</p> |
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Victim Services and Rights

Mandatory Services
(42 U.S.C. § 10607 (1990) (transferred to 34 U.S.C. § 20141 (2017))

1. Victim identification.
2. Reasonable protection.
3. General information.
4. Services referrals.
5. Notice of case events.
6. Return of property.
7. Employer/debt notification.



Mandatory Rights
(18 U.S.C § 3771)

1. Reasonable protection.
2. Reasonable, accurate, and timely notification.
3. Not to be excluded from court.
4. To be reasonably heard.
5. The reasonable right to confer with the prosecutor.
6. To full and timely restitution as provided in the law.
7. To proceedings free from unreasonable delay.
8. To be treated with fairness and respect for dignity and privacy.

Victim Rights¹

RIGHTS THAT APPLY AT ANY TIME

- Right to Due Process, Fairness, Dignity, and Respect
- Right to Notice
- Right to Privacy
- Right to Protection
- Right to Speedy Disposition
- Right to Culture or Cultural Rights

RIGHTS THAT APPLY TO PROCEEDINGS

- Right to be Heard
- Right to be Present
- Right to Courtroom Accommodations
- Right to Information about Victims' Rights
- Right to Notice

RIGHTS THAT APPLY AFTER AN ACCUSED IS CHARGED OR RELATED TO SENTENCING

- Right to Access Reports
- Right to Confer
- Right to Restitution

VICTIMS' RIGHTS TO ENFORCEMENT

- Right to Assert and Enforce Rights
- Right to Return of Property



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30-20 VICTIM'S RIGHTS ACT (POI Law and Order Code)

30-20-01. Victim's Bill of Rights.

A. All victims have a right to the following when dealing with the criminal justice system:


- i. To be treated with fairness, respect, and dignity and to be free from intimidation, harassment, or abuse throughout the criminal justice process.
- ii. To be informed, upon request, when the accused or convicted person is released from custody or has escaped.
- iii. To be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present.
- iv. To be heard at any proceeding involving a post-arrest release decision, a negotiated plea, and sentencing.
- v. To confer with the prosecution after the crime against the victim has been charged, before trial, or before any disposition of the case, and to be informed of the disposition.
- vi. To read pre-sentence reports relating to the crime against the victim when they are made available to the defendant.
- vii. To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.
- viii. To be heard at any proceeding when any post-conviction release from confinement is being considered.
- ix. To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.
- x. The right to copies of any documents filed with the Court regarding the conviction, sentencing, imprisonment, escape, or release of the accused.
- xi. To have at least one support person present during any hearings.

B. A victim's exercise or lack of exercising any right granted by this section shall not be grounds for dismissing a criminal proceeding or setting aside any conviction or sentence.

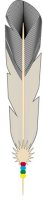


Law & Policy Cross Walk

- ✓ Review what you have
- ✓ Map tribal laws to rights
- ✓ Highlight existing laws
 - Assess how they are working based on an understanding of when rights apply
- ✓ Map implementation policies to law, i.e., program protocols, procedures, etc.
- ✓ Identify the service providers responsible for implementation, i.e.,
 - Justice Personnel: Law Enforcement, Prosecutors, Public Defenders, Corrections, Probation
- ✓ Victims Services Staff: Advocates, Social Services
 - Allied Services: Behavioral Health
 - External Agencies: County, State, Federal



Law & Policy Cross Walk

<ol style="list-style-type: none"> 1) What law enforcement agency responds to crimes occurring in the Tribe? 2) Where are crimes in the Tribe prosecuted or heard? 3) Who helps victims assert their rights in tribal courts and other tribal justice processes? 4) What specific tribal laws cover victims' rights in the Tribe? 5) What specific federal statutes cover victims' rights in the Tribe? 		<ol style="list-style-type: none"> 6) What laws cover victims' rights when the victim lives in the Tribe, but the crime occurs off tribal lands, jurisdictions, or checkerboard areas? 7) What victim-related laws apply to Native American children and youth under 18 in the Tribe? 8) What are victim-related cultural-based laws, customs, and traditions in the Tribe?
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Applicable Victim-Related Tribal Statutes	
Victims' Rights That Apply At Any Time	
Due Process, Fairness, Dignity, and Respect	PBPN: Title 28 Victim's Rights Code, Chapter 28-1 General Provisions, § 28-1-4 Victim's Rights WTC: Title 3 Criminal Code, Article 4 Crimes Against Person, §§ 3-416-417 Sexual Assault; legislative intent and terms defined.
Right to Notice	WTC: § 12-205(1-3) Duties of Law Enforcement to Victims Required Notice PBPN: § 28-3-1 (A) Notification of Victim. [Entry of each hearing, sentence, probation officer information.
Right to Privacy	WTC: Title 1B, Article 4, Rule 1B-411 Regulation of Conduct in Courtroom. WTC: Title 12-216 (1-4) Advocate-Victim Privilege PBPN: § 2-5-1(F) (Confidentiality of Peacemakers Circle)
Right to Protection	RCBCI: Chapter 41 Red Cliff Domestic, Family and Community Violence Code, Section 3. Civil Orders for Protection, § 41.3, A-Q.; § 41.4, C. Protection for Advocates. WTC: Title 1B, Article 7, Rule 1B-709 Sex Offenders (1)(2)(4)(5)
Right to Speedy Disposition	Title 12, Article 2, § 12-210 Written Procedures for Prosecution (8) PBPNL § 2-5-1(E)(6) (duty of Peacemakers regarding timeliness)

Applicable Victim-Related Tribal Statutes	
Victims' Rights That Apply To Proceedings-1	
Right to be Heard	WTC: § 12-211 & 12-214(1)(b) Rights of Victims; Duty of Prosecutor to Notify or Inform. PBPN: § 28-2-1 Requirements, (A)(2) Submit a Victim Statement; § 28-1-4 (3) To be heard at sentencing and at any time deemed appropriate by the District Court.
Right to be Present	WTC: § 12-214 (1)(c) Rights of Victims; Duty of Prosecutor to Inform; Title 4 Juveniles, Rule 19 Hearings. PBPN: § 28-1-4 (2) To be present at any public hearing concerning the accused or the convicted person.
Right to Courtroom Accommodations	Title 1, Article 2, 1-224 Trials and Hearings Title 3, Article 4, 3-420 Sexual Assault - in-camera hearing; PBPN: § 28-3-1 (A) (4)...separate waiting area for victims.

Applicable Victim-Related Federal Statutes		
Selected Victims' Rights That Apply At Any Time		Statutes
Right to Privacy	Victims' Right to Be Treated with Fairness and with Respect for the Victim's Dignity and Privacy.	18 U.S.C. § 3771(a) (8).
	Child-Victims' Rights: Privacy Protections.	18 U.S.C. § 3509(d).
	Victims' Privacy and Protection Rights Regarding Disclosure of Witnesses When Defendant Raises Public-Authority Defense.	Fed. R. Crim. P. 12.3.
Right to Protection	Victims' Right to Be Reasonably Protected from the Accused. Mandatory Reporting of Child Abuse in Indian Country.	18 U.S.C. § 3771(a) (1). 18 U.S.C. § 1169(a)-(b), (d).
Right to Speedy Disposition	Victims' Right to Proceedings Free from Unreasonable Delay.	18 U.S.C. § 771(a)(7).
	Child-Victims' Rights: Speedy Trial. Courts' Duty to Sentence Defendants Convicted for the First Time of a Domestic Violence Crime to Probation if Not Sentenced to Term of Imprisonment.	18 U.S.C. § 3509(j). 18 U.S.C. § 3561(b).

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Two More Things!

AIDA can assist you with two subsidized projects:

➤ **Tribal Court**

Assessments,
funded by the
BIA Tribal Justice
Support Office

➤ **Tribal Victim**

**Specialist Internship
Program,**
funded by the
Office for Victims
of Crime

**For more information, contact:
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