



# Tribal Remedies for Violations of Protection Orders

Presented by  
Honorable BJ Jones  
September 26, 2018

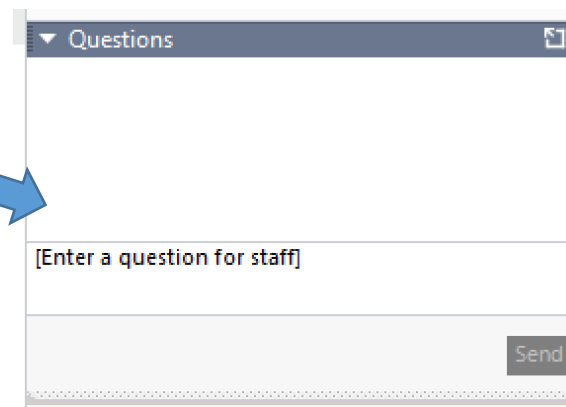
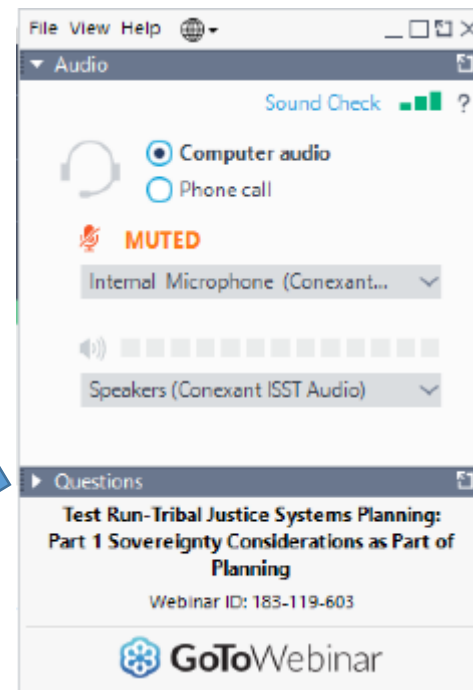
# OVC's American Indian and Alaska Native Training and Technical Assistance Project



*This project is supported by Grant No. 2015-MU-GX-K075 awarded by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. The opinion, findings, and conclusions or recommendations expressed are those of the contributors and do not necessarily represent the official position or policies of the U.S. Department of Justice.*

# During the Webinar

- All attendees will enter the webinar muted.
- If you desire to ask a question or make a comment, please use the **Questions** area of the GoToWebinar dialogue box, typically on the right side of your screen.
- If you have a question about webinar logistics or webinar performance, please enter the question in the **Question** box and it will be answered by our behind-the-scenes facilitator.





# Poll Questions

- Poll questions will be asked during the webinar. They are asked so we can better understand the audience and provide the most useful information to you.
- As they will only be open a short period of time, please respond promptly.

The screenshot shows a web-based poll interface titled "QUICKPOLL". The main question is "Which best describes your role?". Below the question, it says "Select one of the following:" and lists four radio button options: "Investigator", "Forensic Examiner", "Prosecutor", and "Other". At the bottom right, there is a red text message that says "Poll in progress for attendees only." and a "Submit" button.



# Poll



# Post Webinar Information

- At the conclusion of the webinar, a short survey will appear in a separate web browser. We ask that you complete the survey in an effort to gather information to better serve the community in preparation for future webinars.
- You will receive an email within 2-weeks of the live webinar containing instructions on how to access our webinar library, where you can view the recording of this webinar, and access additional recorded webinars and self-paced courses.

# Certificate of Attendance

- We offer a Certificate of Attendance on our live webinars
- To receive your certificate you must
  - **Attend the entire live webinar**  
(no certificates are available for the recorded webinars)
  - **Complete the survey at the end of the live webinar**
- Certificate of Attendance will be emailed within 2-weeks





# 2 PART SERIES

Tribal Remedies for  
Violation of Order  
for Protection

2

Integrated DV Courts  
in Tribal Communities

1

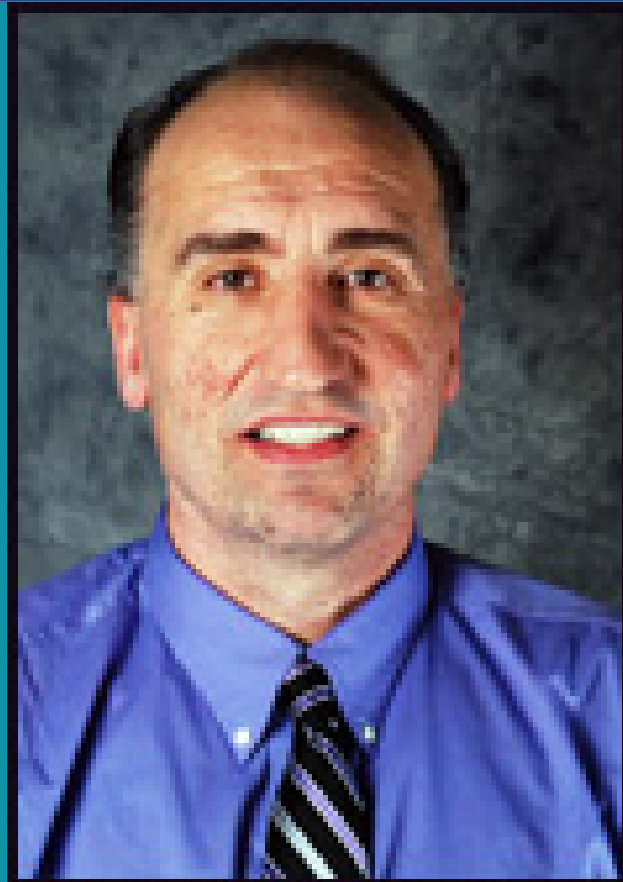




# Honorable Judge BJ Jones

Director

University of North Dakota School of Law, Tribal Judicial Institute





# Poll

*“If we are to fight discrimination and injustice against women we must start from the home for if a woman cannot be safe in her own house then she cannot be expected to feel safe anywhere.”*

— **Aysha Taryam**

First female  
publisher of Middle  
Eastern newspaper





## Tribal Remedies for Violation of Order for Protection

# 2

- Examine the authority of Tribal Courts to issue Domestic Violence Protection orders
- Examine how federal law, 18 USC §2265(e) has fortified tribal court authority in relation to Protection Orders
- Examine civil remedies available to tribal courts in enforcing civil Protection Orders
- Examine criminal enforcement of Domestic Violence Protection Orders, including against non-Indians
- Examine potential for felony sentencing of both Indian and non-Indian perpetrators of multiple Domestic Violence offenses



# Poll



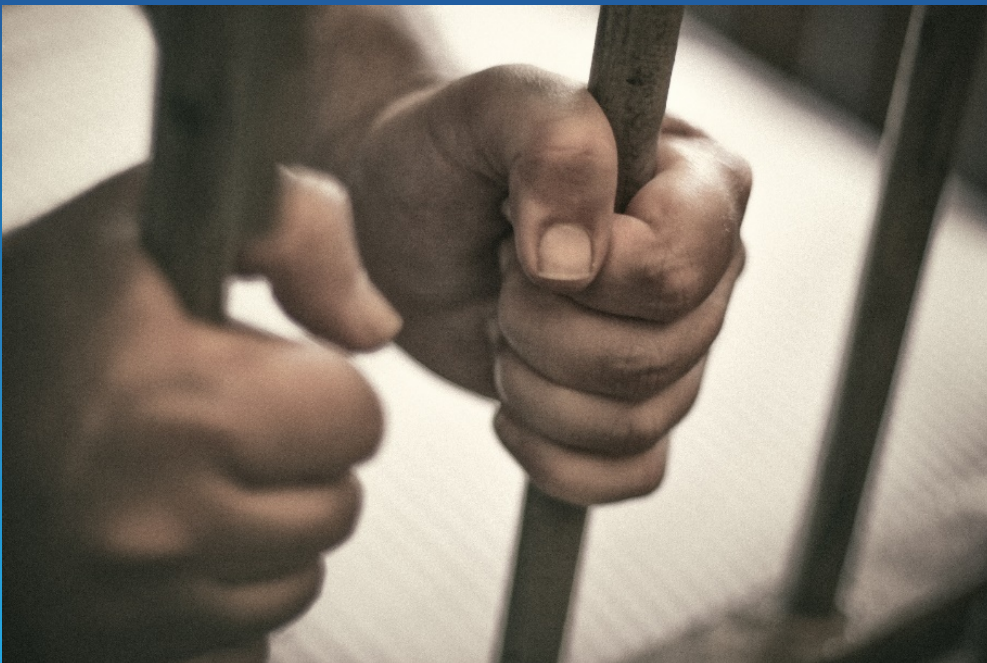
# Inherent Authority to Issue Domestic Violence Protection Orders



Federal Law  
18 USC §2265(e)



# Victim Safety



- Preemptive First Step
- Accountability
- Restitution

## Federal Law 18 USC §2265 (e)

(e) Tribal Court Jurisdiction.— For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving **any person**, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise within the authority of the Indian tribe.





# Extraterritorial Jurisdiction of Indian Tribal Courts

- 2265(e) - Indian tribal courts may issue protection orders against off-reservation persons if the conduct impacts on-reservation persons





# Civil Remedies for Violations

- Civil Contempt Penalties
- Expulsion or banishment
- Other appropriate mechanisms

Billings Gazette, James Woodcock, 5/4/2008



# Criminal Sanctions



- Notice of the petition for a protection order has been received
- Defendant has the right to be heard and confront the petition
- Issuing court must have jurisdiction
- Defendant must have knowledge of the contents of the order being violated
- Violation must relate to the prohibition against contact or further domestic violence only



# Poll



# Impact of Violence Against Women Act (VAWA) on Tribal Criminal Jurisdiction

Under 25 USC §1304(c) a Tribal Court may criminally prosecute:

- Occurs in Indian Country
- Violates a protection order
- Issued against the defendant
- Enforceable by the tribe
- Consistent with Section 2265(b) of Title 18







# What is a Protection Order under this statute?

- Any injunction, restraining order, etc. issued for the purpose of preventing
  - violent or threatening acts
  - harassment
  - sexual violence
  - contact or communication
  - physical proximity
- Includes temporary or final orders
- Does not necessarily involve intimate partners

Silence

A black and white photograph of a woman's face and upper torso. She has dark hair and is looking directly at the camera. The word "Silence" is written in a dark, handwritten-style font across her chest. In the top left corner, there is a small orange speech bubble icon.

# Exceptions

- Defendant and victim are both non-Indian
- Defendant lacks ties to the Indian tribe
- Tribe may exercise special jurisdiction over a defendant if:
  - Defendant resides in Indian country of the tribe
  - Defendant is employed in Indian country of the tribe
  - Defendant is a spouse, intimate partner, or dating partner of a member of the tribe
  - Defendant is an Indian who resides in Indian country of the tribe

The background of the slide features a blue-tinted image of a hand holding a scale of justice. The hand is in the foreground, and the scale is in the background, creating a sense of depth and balance.

## What type of crime is this?

- It depends
  - Misdemeanor; 1 year and \$5,000
  - Felony; 3 years and \$15,000 (one offense)
  - Felony; 9 years and \$15,000 (multiple offenses)
- Felony option only exists if the offense is a felony under state and federal laws





# Habitual domestic violence offenders

- 25 USC §1302(b)(1) permits felony punishment if:
  - prior convictions under 25 USC §1302(b)(1)
  - prior convictions for violation of protection order in any jurisdiction
- Bottom line: felony punishment permitted for habitual violators if the law clearly states this fact



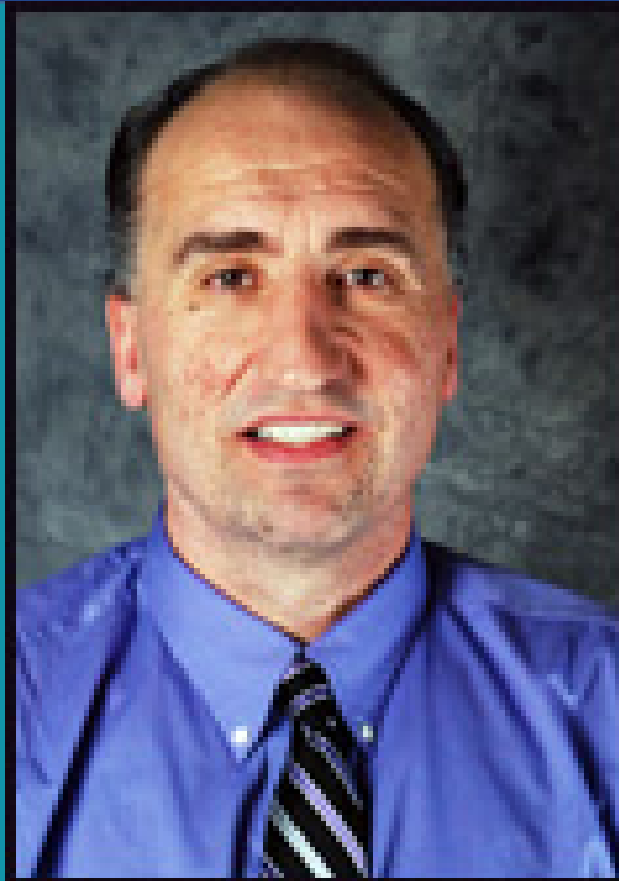
# Q&A



# Honorable Judge BJ Jones

Director

University of North Dakota School of Law, Tribal Judicial Institute





# REMINDER


- To receive your certificate of attendance you must
  - **Attend the entire live webinar**  
(no certificates are available for the recorded webinars)
  - **Complete the survey at the end of the live webinar**
- Certificate of Attendance will be emailed to you within 1-week
- You will receive an email within 2-weeks containing instructions on how to access the recording of this webinar.

# WWW.NCJTC.ORG


### Explore Training

[BROWSE BY CATEGORY](#)


[BROWSE BY PROGRAM](#)




Alcohol and Substance Abuse




Child Abuse and Neglect




Child Sex Trafficking




Community Policing and Prevention




Courts and Community Corrections




Endangered, Missing, and Abducted Children




Leadership, Management, and Planning



Sex Offender Management




Technology Facilitated Crimes Against Children



#### REQUEST TRAINING

Need us come in or go out to your area as needed?  
We are here!

[LET'S GET STARTED!](#)




#### JOIN OUR MAILING LIST

Subscribe now to get the latest training news FIRST!

[SIGN ME UP!](#)

#### Register Today!

Texas or Wisconsin



#### Court Safety and Security Conference

[Learn More](#)



National Criminal Justice Training Center of Fox Valley Technical College



**This presentation was produced with grant funding awarded under by the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice.**

**The opinion, findings, and conclusions or recommendations expressed are those of the contributors and do not necessarily represent the official position or policies of the U.S. Department of Justice.**

**Additionally, points of view or opinions expressed are those of the presenter(s) and do not necessarily represent the official position or policies of the National Criminal Justice Training Center or Fox Valley Technical College.**



# THANK YOU

[www.NCJTC.org](http://www.NCJTC.org)