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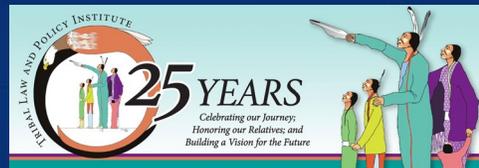
Introduction to Tribal Legal Code Resource: Crimes Against Children

Guide for Drafting or Revising Tribal Laws on Crimes against Children

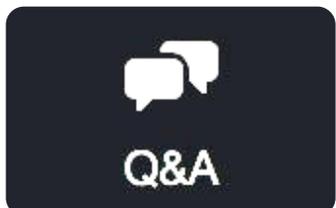
May 24, 2022 | Presented by:

Kelly Stoner & Heather Torres, Tribal Law and Policy Institute

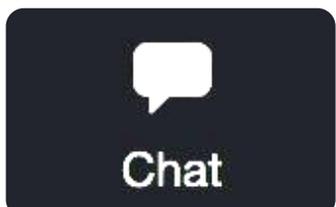
Michelle Rivard Parks, Tribal Judicial Institute



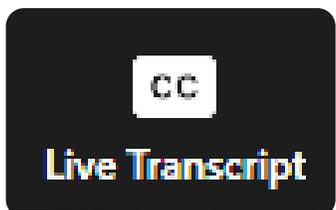
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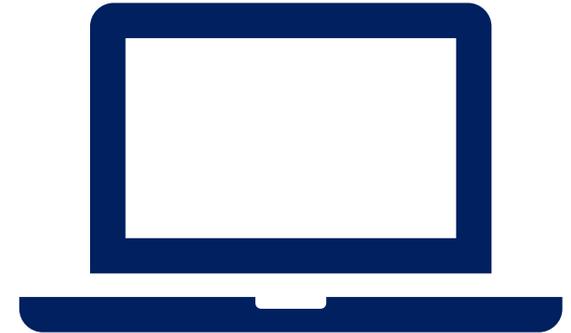
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Today's Presenters



Kelly Stoner,
Victim Advocacy Legal Specialist,
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Heather Torres,
Program Director,
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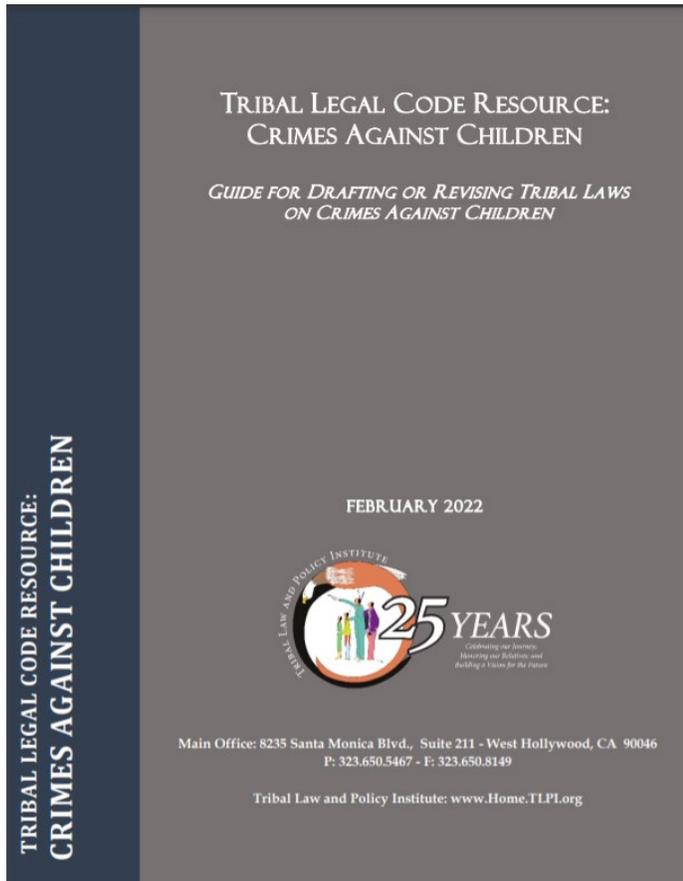
Michelle Rivard Parks,
Associate Director,
Tribal Judicial Institute

Agenda

- I. Purpose of the Guide
- II. Origins of the Guide
- III. Structure of the Guide
- IV. Flowsheets, Exercises, Worksheets
- V. Using the Guide – Deeper Dive: Chapter 7
- VI. Overview of Part IV: Drafting the Code
- VII. Appendices
- VIII. Resources and TA
- IX. Questions

***Tribal Legal Code Resource:
Crimes Against Children***
*Guide for Drafting or Revising Tribal
Laws on Crimes against Children*
www.home.tlpi.org/legal-code-development-series

Purpose of the Guide



Tribal Legal Code Resource: Crimes Against Children guide is designed to provide a process for enacting a culturally-appropriate criminal code that addresses the victimization of tribal children.

Content covered in this publication includes the effects of violence on children, protections for child victims during the criminal process, summaries of existing tribal criminal code provisions, and considerations for approaching tribal code development.

Origins of the Guide

The idea was conceived in 2001 under the guidance of an Advisory Committee of experts in the fields of tribal justice, Native child abuse and victimization, and tribal child and family services providers.

Previous version released in 2008, funded by:

- Children's Justice Act Partnerships for Indian Communities Training and Technical Assistance Grant
- Office for Victims of Crime

Why Update Now?

- We know more about the impact violence has on children
- There are unique protections for children for tribes to consider
- Growth in the recognition of victim's rights
- Improved access to tribal code examples

Structure of the Guide

Part I: Overview

Part II: Protecting Child Victims of Crime During the Criminal Process

Part III: Crimes Committed Against Children Code Provisions

Part IV: Drafting the Code

Appendices

Structure of the Guide: Grounded in a Team Approach

- Assembling the team
- Tips for working as a team
- Getting the team started

Covered Crimes

- Child neglect and endangerment
- Child abuse
- Commercial exploitation of a minor
- Sexual abuse of a child
- Contributing to the delinquency of a minor
- Penalties and sanctions

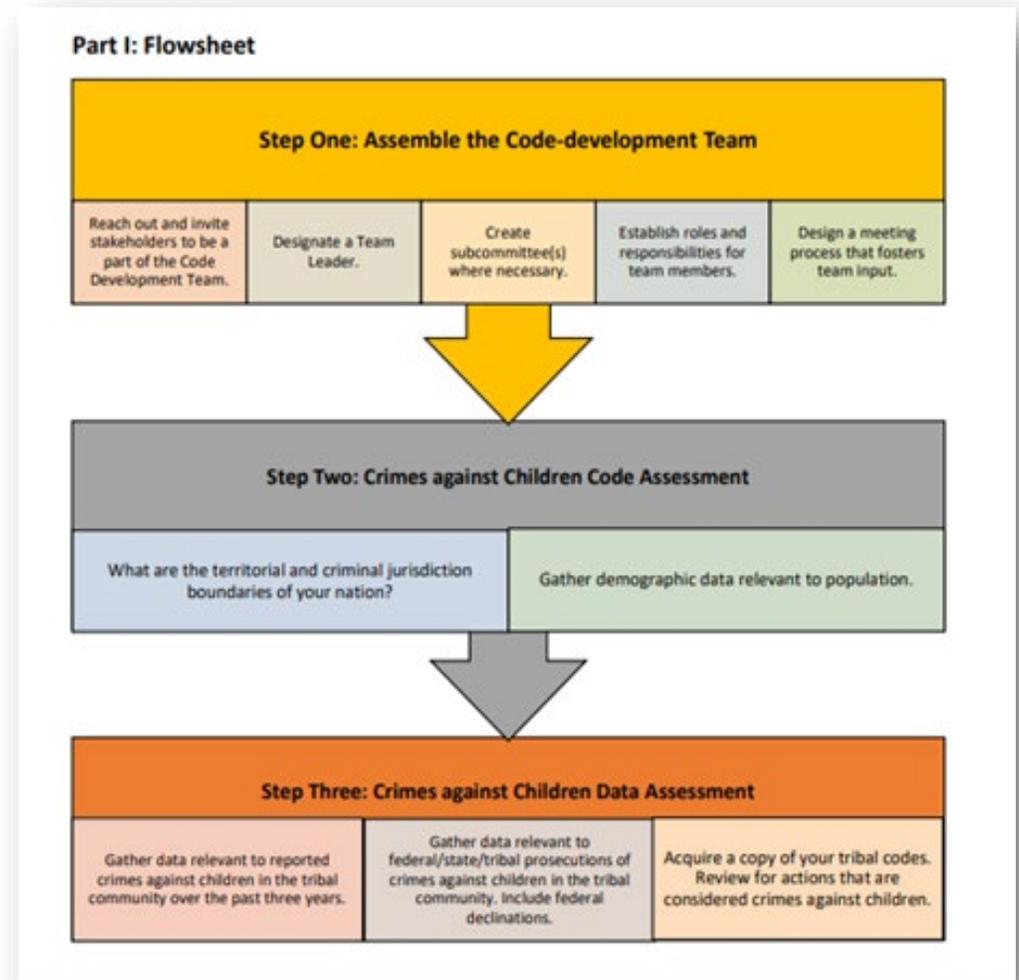
Other Covered Topics

- How violence affects American Indian/Alaska Native children
- Protecting child victims during the criminal process
- Jurisdiction in Indian country
- Using rules of evidence and statutes of limitation to protect child victims
- Victim's rights

Flowsheets: Guiding Through Complex Topics

Flowsheets:

- Appear at the beginning of each Part.
- Lead participants through various steps to consider as an approach to the topic of that particular Part.



Exercises: Group Tasks that Promote Focused Code Drafting

Exercises:

- Appear at the end of Parts I, II, IV, and each chapter of Part III.
- Provide thoughtful questions for code drafters or code drafting teams to work on together.

Part I: Exercises

Part I: Exercise #1—Assemble the Team

Lesson Objectives: Assemble the team. Designate a team leader. Schedule timelines for working through the Guide. Structure the meetings to provide the greatest opportunity for inclusion of all perspectives.

Reading: Part I, Chapter 3: Teamwork paying close attention to **10 Tips to Working as a Team.**

Instructions: Perform the following tasks.

Worksheets: Encourage Consensus in Code Drafting

Worksheets:

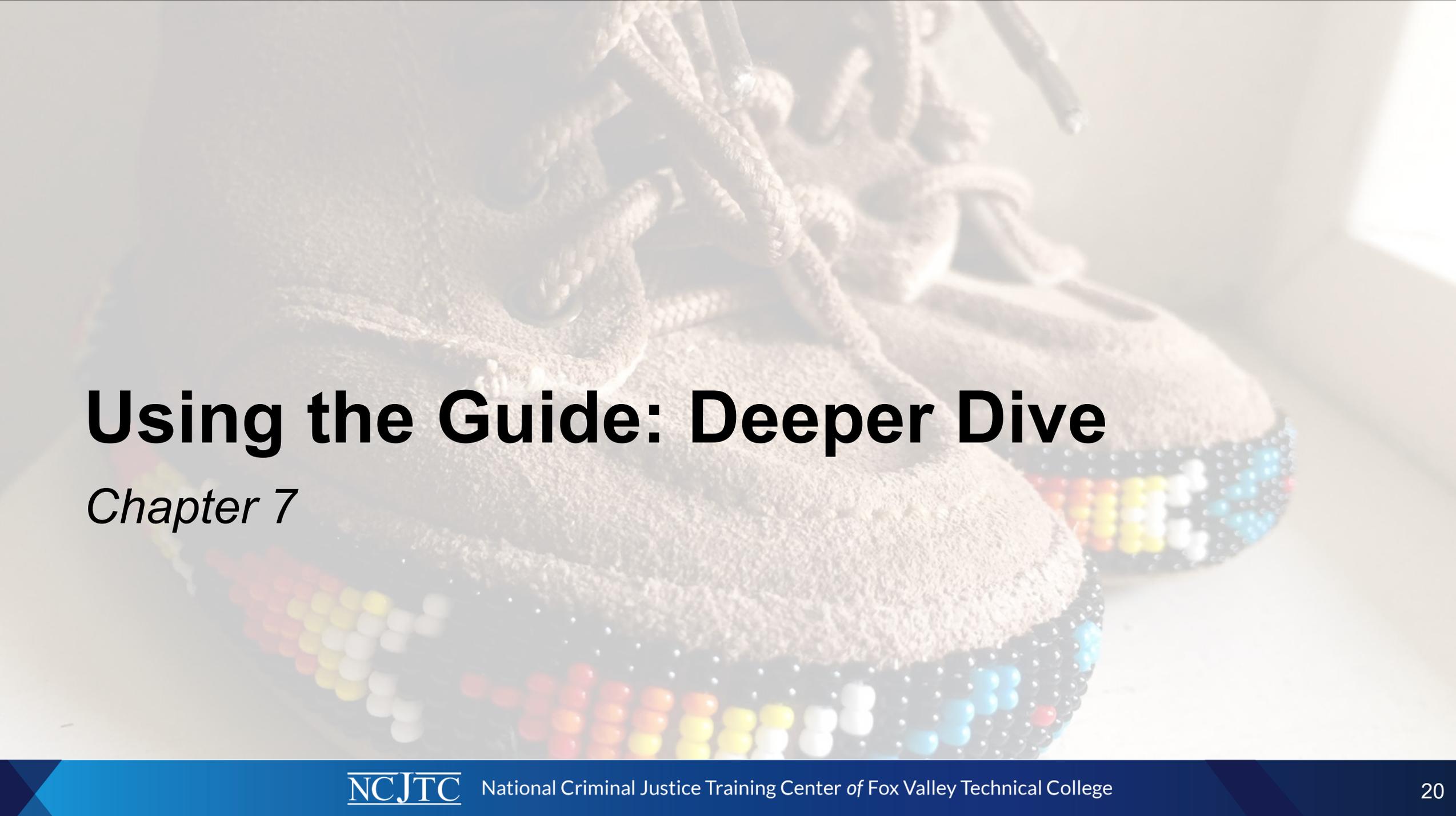
- Are useful for a code drafter or a code drafting team to record answers to the corresponding exercise(s).
- Part IV exercises and worksheets will tie together all the previous exercise responses to underscore priorities and decisions made along the journey.

Part I: Worksheets

Part I: Worksheet #1—Assemble the Team

STEP ONE: ASSEMBLE THE TEAM			
Make a list of potential members of your code development team	What discipline does this individual represent?	What experience, education, or resources does this team members bring to the process?	What role will this team member fulfill as part of your team?
Team Member Name: Child Victim Advocate or Adult who was a child victim of crime (this member is essential to bring the victim's voice to the process)			
Team Member Name:			

Note: The team will need to select a team lead from the members outlined in the preceding text. Circle the name of the team lead.



Using the Guide: Deeper Dive

Chapter 7

Deeper Dive – Chapter 7: Drafting the Findings and Purpose

What are findings?

- Describe the existing problems/issues the code will address.
- Provides context and philosophy for the entire code.

What is the purpose section?

- Sets out the theory or processes of the new law describing how the law will address the problems/issues in the findings (ex. harsher sentences).

How do the findings and purpose work together?

- Putting the 'why' and 'how' together.

Summary of Selected Codes: Findings and Purpose

The Guide will provide tribal code examples in every chapter in *Part III: Crimes Committed against Children Code Provisions*.

Summaries of the selected codes for that chapter will be provided first, followed by a copy of the selected code provisions. Tribal code provisions and federal statutory examples are provided.

- Sault Ste. Marie Tribe of Chippewa Tribal Code
- Pueblo of Zuni Tribal Code
- Federal Statute - Indian Child Protection and Family Violence Prevention Act

Sault Ste. Marie Tribe of Chippewa Tribal Code

Chapter 71: Criminal Offenses Subchapter I: Introductory Matters 71.101 Purposes

(1) The general purposes of the provisions governing the definition of offenses are: (a) to forbid and deter conduct which unjustifiably and inexcusably inflicts or threatens substantial harm to individual or tribal interests; and (b) to give fair warning of the nature of conduct declared to constitute criminal offenses.

(2) The general purposes of the provisions governing the sentencing and treatment of offenders are: (a) to punish the offender for crimes against the Tribe; (b) to remove offenders from the tribal community when required in the interests of public protection; (c) to promote the correction and rehabilitation of offenders; (d) to deter the commission of offenses; (e) to pay restitution to the injured party.

Pueblo of Zuni Tribal Code

Title IX Zuni Children's Code, Chapter 1. General Provisions

Section 9-1-1 Title

This Code is known as the Zuni Children's Code

Section 9-1-2 Purpose, Construction and Severability

A. It is the purpose of this Children's Code to:

1. Recognize that the young people are the Zuni Pueblos most important resource and that their welfare is paramount;
2. Secure for each child before the Court the care and guidance that is in the best interest of the child and consistent with the customs, cultural values and laws of the Pueblo of Zuni;
3. Whenever possible preserve and strengthen family ties and a child's cultural and spiritual identity to help the child become a productive and well-adjusted member of the community;

Pueblo of Zuni Tribal Code (continued)

Section 9-1-2 Purpose, Construction and Severability (continued)

4. Protect the peace, safety and security of the Pueblo of Zuni and its community members;
5. Foster cooperative intergovernmental relations between the Pueblo of Zuni and the state of New Mexico and other states and tribes, with regard to the welfare of children and families;
6. Protect the rights of Zuni parents and the sovereign and traditional right of the Zuni Pueblo to determine the best interest of children and families.

B. Construction

This Code may be liberally interpreted to fulfill its purpose.

C. Severability

If any part or application of this code is held invalid, the remaining provisions shall not be affected.

Federal Statute - Indian Child Protection and Family Violence Protection Act

Federal Chapter 34—Indian Child Protection and Family Violence Prevention

[25 U.S.C. § 3201 - Findings and purpose](#)

(a) Findings. The Congress, after careful review of the problem of child abuse on Indian reservations and the historical and special relationship of the Federal Government with Indian people,

(1) finds that—

(A) incidents of abuse of children on Indian reservations are grossly underreported;

(B) such underreporting is often a result of the lack of a mandatory Federal reporting law;

(C) multiple incidents of sexual abuse of children on Indian reservations have been perpetrated by persons employed or funded by the Federal Government;

(D) Federal Government investigations of the background of Federal employees who care for, or teach, Indian children are often deficient;

[Remainder omitted for this presentation]

Federal Statute - Indian Child Protection and Family Violence Protection Act (continued)

(b) Purpose. The purposes of this chapter are to—

- (1) require that reports of abused Indian children are made to the appropriate authorities in an effort to prevent further abuse;
- (2) establish a reliable data base for statistical purposes and to authorize a study to determine the need for a central registry for reported incidents of abuse;
- (3) authorize such other actions as are necessary to ensure effective child protection in Indian country;

[Remainder omitted for this presentation]

Chapter 7 Exercise: Drafting the Findings and Purpose

Each exercise contains learning objectives, suggested reading, instructions, and tips for drafting team leads. Below are the Exercise Questions for Chapter 7

- **COMPILE** the information from Part I for easy reference.
- **REVIEW** the compiled exercises and worksheets from Part I.
- **DISCUSS** what customary tribal beliefs are held about children and their role in your community.
- **DISCUSS** the team's assessment of gaps in existing tribal code. If there were no identified gaps, the team can discuss other problems or issues identified.
- **DISCUSS** what guiding tribal principles will be important for anyone reading and interpreting your future tribal code or statute.

Note: Use Worksheet immediately following this exercise to record your answers.

Chapter 7 Worksheet: Drafting the Findings and Purpose

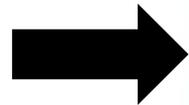
The worksheet for this chapter provides space for code drafters to record their answers to the Chapter 7 Exercise questions.

Chapter 7: Worksheet—Drafting the Findings and Purpose

FINDINGS AND PURPOSE	
WHAT <ul style="list-style-type: none">- Gaps exist in your current tribal code?- Problems or issues need to be addressed?	
WHY <ul style="list-style-type: none">- Do the gaps, problems, or issues need to be addressed?	
CHILDREN <ul style="list-style-type: none">- What role do they play in your community?	
HOW <ul style="list-style-type: none">- Does your tribe plan to address the identified gaps, problems, or issues?- Can you rely on tribal custom and tradition?	

Overall Worksheet for Part III: Crimes Committed Against Children Code Provisions

This worksheet is designed to allow the team to select any of the relevant exercises in the preceding text and utilize information from those exercises to prepare to draft statutes in Part IV.



IDENTIFYING NECESSARY CODE PROVISION(S)			
We have decided that our team will focus on:	<input type="checkbox"/> Drafting a comprehensive code to address the problems/issues identified in Part I and Part II.		
	<input type="checkbox"/> Drafting/amending specific criminal statutes within our existing code to address the problems/issues identified in Part I and Part II.		
We have decided that our team will include: (see Part III, Chapters 7–8)	<input type="checkbox"/> Findings and purpose as part of a comprehensive crimes against children code.		
	<input type="checkbox"/> Findings and purpose in our existing criminal code that will be revised to reflect crimes against children.		
	<input type="checkbox"/> Definitions.		
CODE PROVISION(S)	Current Status of Tribal Code	Necessary Tribal Code Provisions to Draft/Amend	Penalty/Sanctions <input type="checkbox"/> Exercising TLOA Enhanced Sentencing Authority <input type="checkbox"/> Exercising SDVCJ over non-Indians (see Chapter 4)
Child Neglect	<input type="checkbox"/> We have code <input type="checkbox"/> We do not have code	<input type="checkbox"/> Need to add this crime <input type="checkbox"/> Need to amend existing code <input type="checkbox"/> Need to add definitions <input type="checkbox"/> Need to add or amend sentencing provisions	<input type="checkbox"/> Range of fines/incarceration that increases with each subsequent offense <input type="checkbox"/> Other sentencing options traditional sentencing (restitution, mandatory counseling, shaming or other) <input type="checkbox"/> Mandatory incarceration

Overview of Part IV: Drafting the Code

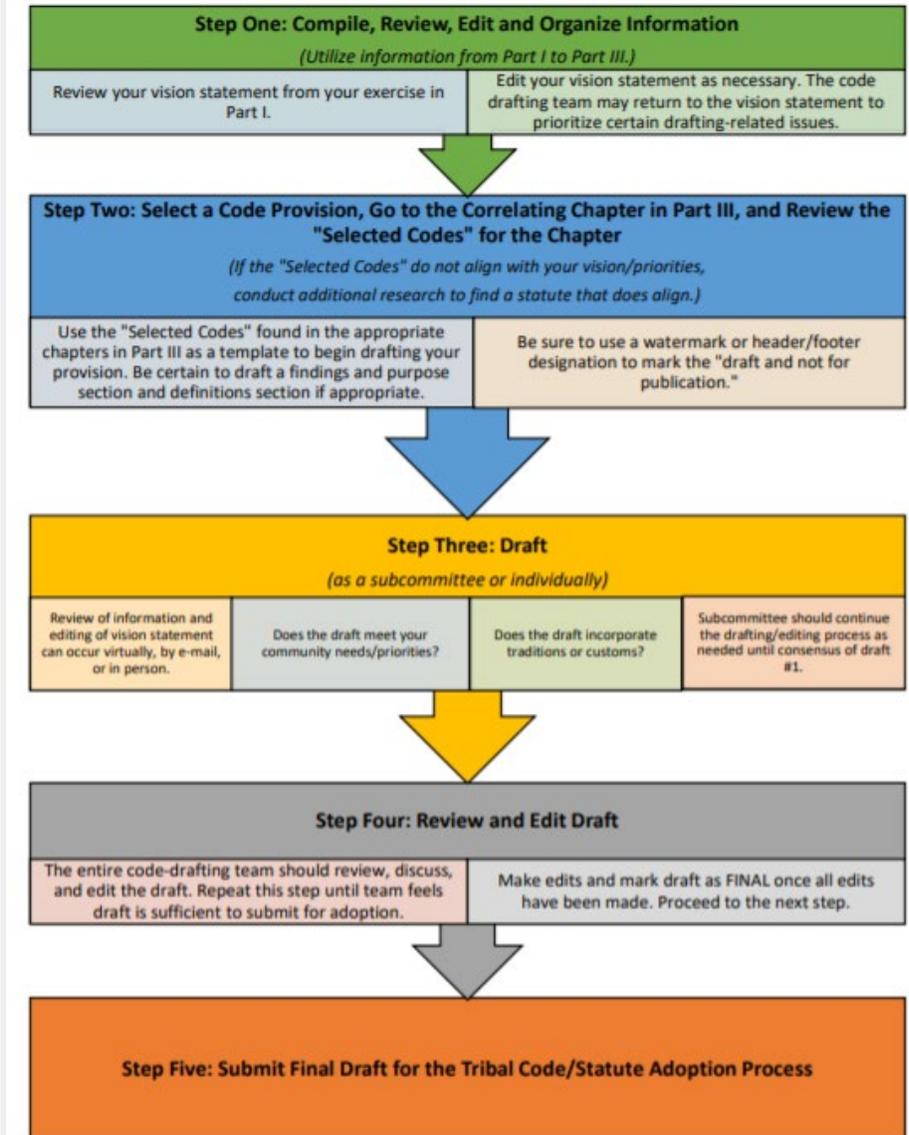
Considerations:

- Drafting an entire code or single part of an existing code
- Team drafting
- Contains one flowsheet
- Contains one chapter, Chapter 15: The Process of Drafting a Tribal Code
- Contains two exercises with accompanying worksheets

Flowsheet for Drafting

1. Compile, review, edit and organize information
2. Select a code provision, go to the correlating chapter in Part III, and review the "selected codes" for the chapter
3. Draft
4. Review and edit draft
5. Submit final draft for the tribal code/statute adoption process

Part IV: Flowsheet



Chapter 15: The Process of Drafting a Tribal Code

- Getting organized
- Subcommittee and the victim's voice
- Assessing Tribal Code Examples and Drafting Tips
- Time and Task Meetings
- The Tribal Code Adoption Process

Getting Organized

- Gathering documents (Tribal Constitution and codes)
- Gathering impact documents (tribal/federal/state codes that might control)
- Gathering any relevant tribal court opinions
- Gather any written vision statements the Native Nation may have regarding protecting children
- Print off the Indian Civil Rights Act (25 U.S.C. 1301 et.seq.)
- Have a dictionary handy
- Have this Guide handy

Subcommittee and the Victim's Voice

- The safety of children and batterer accountability that reflect the customs/traditions/beliefs of the tribal community should ALWAYS remain at the forefront
- Setting of mutual respect
- Victim's voice must be heard
- Creating subcommittees to draft particular segments of the code
- Team members should share resources, training and technical assistance
- Team should consider traditional/cultural community priorities and incorporate into the drafts when possible
- Team members should be allowed input to drafts prior to finalizing the code

Assessing Tribal Code Examples and Drafting Tips

- Review other tribal codes for ideas (samples are provided in the Guide)
- Review drafting tips in the Guide
- Don't forget a 'savings clause'
- Schedule time and task meetings for entire team to provide reviews and edits
- Be familiar with the tribal code adoption process

Appendices

The Appendix contains the following:

- Glossary and Acronyms
- Chapters 12-13, Introduction to Tribal Legal Studies
- Savings Clause
- Additional Resources

Resources and Technical Assistance

National Criminal Justice Training Center

www.ncjtc.org

Tribal Law and Policy Institute Legal Code Development Series

www.home.tlpi.org/legal-code-development-series

Tribal Court Clearinghouse

www.tribal-institute.org

Tribal Judicial Institute

law.und.edu/npilc/tji/

Q&A and Contact Information

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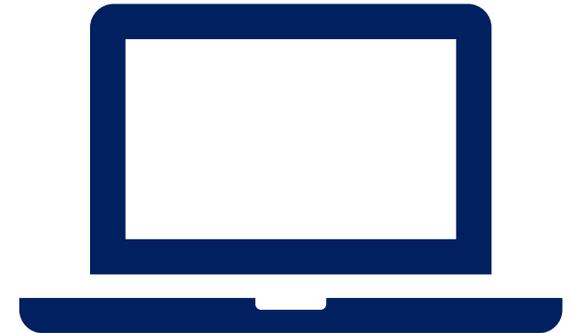
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