

Webinar Transcript - Introduction to Tribal Legal Code Resource: Crimes Against Children

Welcome to the National Criminal Justice Training Center webinar Introduction to the Tribal Legal Code Resource: Crimes Against Children. My name is Justine Souto and I'll be moderating for you today. Please welcome our presenters Heather Torres, Kelly Stoner, and Michelle Rivard Parks. Ladies, the time is now yours.

Thank you so much, Justine. I'm going to have Kelly and Michelle introduce themselves first and then I'll introduce myself and take us into our first part of the discussion today.

Thanks, Heather. Hi, everybody and welcome to the webinar today. I'm Kelly Stoner with the Tribal Law and Policy Institute. Michelle.

Hello, everyone and welcome to today's presentation. My name is Michelle Rivard Parks and I am the Associate Director at the Tribal Judicial Institute located here at the University of North Dakota School of Law.

Thank you both. And hi, everyone. Thank you so much for joining us today. My name is Heather Torres. I'm a citizen of San Alfonso Pueblo and a descendant of the Navajo Nation and Mexican peoples. And I work for the Tribal Law and Policy Institute as Program Director. And I got to serve as co-author of this wonderful resource with Kelly and Michelle.

Up now on the screen is the agenda for today. You'll see the topics that we're hoping to cover. This is an Introduction to The Tribal Legal Code Resource: Crimes Against Children. We'll be going over the purpose of the guide, its origins, some unique features that we added to this resource, and take a deeper dive into one of the chapters so you can see how things are laid out within the guide.

We highly encourage you, if you have not already to download The Crimes Against Children Code Resource. The link is listed here. And I believe we'll be dropping that in the chat as well so you can follow along with us during this presentation. We also wanted to make a special note that this resource was developed prior to the re-authorization of VAWA, VAWA 2022, which includes the crime of child violence. So while we might be able to discuss a little bit more about that today in the Q&A, but we just wanted to note that this resource was developed before VAWA 2022.

OK. So the purpose of the guide. The purpose of the guide is really to assist tribes and tribal code drafters with drafting laws that address crimes committed against children and in a way that is grounded in cultural values and really represents the tribal worldview. It covers topics related to child violence, including potential protections for victims during the criminal process. In addition to providing summaries of selected tribal criminal code examples for perusal and consideration by your team or your folks that you have drafting code. Importantly, the guide is not meant to be a model code but a compilation of resources to assist folks in drafting codes that are culturally appropriate and relevant for their tribal communities.

Origins of the guide, we want to make sure we acknowledge the folks that kicked off this work and the resource. The idea for this guide was conceived in 2001 under the guidance of an Advisory Committee. Those advisory committee members included Abby Abinanti, Roe Bubar, Craig Dorsay, Carrie Garrow, B.J. Jones, Paula Moody, Pat Sekaquaptewa and Evelyn Stevenson. So we honor and acknowledge the work that was put in to conceive this idea and to also release the first version of this guide which was released in 2008. And it was an honor and a privilege to work on this along with Kelly and Michelle and others to update the guide.

And so why update now, right? So we know more about the impact violence has on children and the rates of violence that are being committed against American Indian and Alaska Native children. We recognize that there are unique protections for children for tribes to consider, especially if a child is going to be part of the criminal legal process. There's been a growth in the recognition of victims' rights. And there's also improved access to tribal code examples for folks to look at and consider as they're drafting code and statutes for their community. And bottom line, our children are still vulnerable and in need of protection.

OK. So looking at the guide the structure is broken up into four parts along with some appendices. And the titles here are listed. Overview, protecting child victims of crime during the criminal process, crimes committed against children code provisions, and drafting the code. So the structure really takes the user from the why behind drafting these particular types of codes. So in part one you'll see a discussion about what the guide is and what the guide can and cannot do, how violence affects children, as well as outlining a teamwork approach to code drafting. So again, you're seeing this flow from that background into producing actual code drafts that are culturally informed and specific to the needs of the community.

So we did ground this guide in the team approach. We recognize that code development is a commitment. It can be labor intensive. And so with that understanding, we've included some tips and considerations on how to organize a team and get started. And although the team approach is highlighted in this guide, we know sometimes it's a one person, two person team drafting. But the tips and resources that are offered here and in the team approach discussions can really be useful for folks in that situation as well.

The crimes that are covered in this guide include those listed here. Child neglect and endangerment, child abuse, commercial sexual exploitation of a minor, sexual abuse of a child, contributing to the delinquency of a minor, as well as penalties and sanctions. Each crime or topic is its own chapter. And some chapters have more focused subsections within them. So for example, the chapter on child abuse has a subsection on physical child abuse and emotional and psychological abuse. Within these chapters, you'll also find selected tribal code examples and summaries of those examples for your consideration.

Other cover topics, again as we've mentioned, the impact on violence against children, especially to understand the important background information to help think through some of the considerations that we offer. And these topics here that are listed are mostly discussed in parts one and two. And again, they contain that foundational and important background information to inform some of the decisions your team might make in the drafting process.

Now to get to some unique features of this guide. This is something a little different than some of our other legal code resources that you might be familiar with at TLPI. In this update we added flow sheets which really help guide through kind of complex considerations and topics. And so you'll find a flow sheet at the beginning of each part. And it'll help lead participants through the various steps to consider as an approach to the topic of that particular part.

The image here is a picture of the flow sheet that's within the PDF resource. And it's broken down by steps and smaller considerations for folks thinking about assembling their code drafting team and assessing the rates of crimes being committed against children in their community as well as how to assess their current code. So again, you'll find this at the beginning of each part to kind of help orient folks into the deeper discussions that are done throughout the part.

You'll also see exercises in this guide. They appear at the end of parts one, two, and four. And actually at the end of each chapter of part three. Since part three dives into the covered crimes and penalties and sanctions, we wanted to make sure to add exercises there for groups to think about, particularly for those crimes and penalties and sanctions.

So they provide thoughtful questions for co drafters or code drafting team to work together through. So to process the information that's presented on the particular crime or penalty and think through a little bit deeper about what needs to be in a particular code or statute. And again, there's a small picture there just to give you the intro and an example of what the exercises can look like.

All right. Finally, another new addition to this publication is our worksheets. So these really accompany the exercises and they allow folks to kind of come to decisions and note what folks are thinking about in response to the exercise questions. So again, they're really useful for the code drafter or code drafting team to record their answers for the questions that we offered for consideration. And actually the part four exercises and worksheets will really tie together all of the previous information and exercises covered in parts one through three.

So if you haven't noticed already, this is a very large resource. It tries to be very comprehensive and thorough. But you still will be able to identify this particular page, for example. So if you wanted to focus on a particular crime or a particular exercise, you can go right to those and just print those exercises and worksheets, which might be really useful for your team. So now that we've reviewed the structure and the why and how folks can work through the guide, I'm going to pass it over to Kelly to take us into a deeper dive into a particular chapter within the guide.

We're going to take this little segment here that I'm going to be presenting and sort of give you the flavor of one of the chapters in the guide. And as Heather mentioned earlier, just to tie back into some of the things she pointed out, it really is grounded in a team approach. And the number of team members and how often the team meets and that sort of thing is going to be totally up to the tribe. In some of the smaller tribes you might only have two team members. You might have a prosecutor and maybe a child victim advocate or something like that. That's OK. You don't have to have large teams.

The guide was meant for you to be able to tailor the team and exercises, including the picking out which of these crimes you think your community needs to address. It's meant for you to be able to do all of those things and do it in a way where you're carefully guided. And each exercise, at least in the beginning chapters, builds on itself. So you're collecting all of those worksheets and exercises to help inform the work that you're going to do when you begin to draft.

But let's get started and see where this journey and chapter 7 will take us. So it starts off talking about drafting. These may or may not-- I don't know if they're going to be referred to as statutes, but it's the findings and the purpose piece if you're drafting a crimes against children code. And it's super important. I can tell you this as I sat on the bench for one of the Oklahoma tribes as a tribal judge for eight years, not a member of that tribal community. And I relied heavily on the findings and purposes of the juvenile code there or the crimes against children code to sort of inform me of what the tribal members felt were very important towards healthy families and healthy children and healing.

So even though you might find this part a bit easier than the actual drafting of the statutes, it's still so important to ground tribal judges, tribal prosecutors in what the tribal nation is saying is important. And we find that those clues in the findings and purpose sections of the code. So we do spend quite a bit of time going through this in chapter 7. And just for those of you who might not be familiar with drafting, what the findings are is describing, identifying the problem or issue that this code is going to address. Whether that's crimes against children, whether you just say, well, all we really have here and need here in our tribal court is child abuse and neglect types of crimes. It doesn't matter.

It matters that you get people on your team who were informed about what issues the particular tribal nation is facing and you identify those. You can identify those through data. You can identify those through reaching out to the community. Depending on how large the tribal community is, people just may know. So again, just kind of reflecting on starting in a place where the team is identifying what the issues are that this code is going to address. So that's going to be your findings. May have some stats in it, a variety of different things. It may have a cultural piece in it. Finding that a particular tribal nation feels a certain way or holds children out to a certain esteem level or something like that and that they need protected.

The purpose section, which will follow the findings, and sometimes you'll find these two sort of conflated, kind of merged together. I personally appreciate when they are separated out when I was on the bench, for sure. So the purpose section is going to set out the theory or processes of the new law. Basically saying how these laws, this code is going to address this issue you just identified in the findings. It can have things in it like holding batterers accountable, making sure children as victims of crime have access to certain services, you'll provide a child advocate to work with these children as they move through the criminal justice system, harsher sentences. What is this better accountability going to look like?

It can be general. It doesn't have to have a whole list of things you're going to do. But just making sure that you're informing that tribal prosecutor and tribal judge not only of the issue you've identified, but the purpose of even drafting this code. It's sort of like this code should be interpreted very broadly to ensure or underline the fact that this particular tribal nation finds that children are sacred and they're entitled to be protected and holding the batter accountable is essential to that. Something like that.

OK. And so we put the findings and purpose together. I prefer them to be broken out separately, which is the way we approach this particular statute or this particular segment-- chapter, I'm trying to say, if I could speak properly. And it's putting the why and the how together here. Again, can't overemphasize this enough. This may feel like it's a very simplistic sort of exercise for your team, but it's going to ground what's going to come after.

All right. Summary of selected code. So after you've drafted the findings and purpose in each of the chapters you're going to see a summary of some tribal code examples that we as the authors we've plucked out, we did our research. We thought, well, you need three different types. There'll be generally two tribal examples and then we gave you the federal example so that you can have three different statutes to look at.

You don't have to recreate the wheel. It gives you some ideas. You can pluck out bits and pieces of what you like and create your own. You can use one of the others if it fits perfectly with respect to the findings and purpose of your particular tribal community. Let me see, I think that's all I wanted to tell you on that slide. So let me move on.

So the very first slide, at least in chapter 7, again, giving you that deeper dive into what you can experience as you move through the chapters. We selected Sault Ste. Marie Tribe of Chippewa. And it's giving you examples of findings and purposes. So that again, you don't have to sit down and start from scratch. You can do your own research and select different examples if you'd like. But we just wanted to get food for thought here to get the team going.

And you can see how Sault Ste. Marie is setting out their-- they call it introductory matters purposes, doesn't matter what you call it. It matters that you get your findings and purpose in here. And so they're really telling you here how this code is to be construed. They want to forbid and deter conduct which unjustifiably and inexcusably inflicts or threatened substantial harm to individual or tribal interests.

And they go on down through this. They also mention the general purpose is to remove offenders from the tribal community when required in the interest of public protection. Again, just giving you some ideas of things that really might be food for thought for the team as they determine what needs to go into their findings and purpose piece.

Pueblo of Zuni Tribal Code. And they decided in their code they're going to name it. It's the Zuni Children's Code. You may or may not be doing an entire code. We also developed this publication where if you just want to go in and amend some existing crimes, you feel like they need to be updated, maybe you want to add a few. Certainly you can take that approach with this publication anyway.

We sort of as a team sat down and thought, some tribes will want an entire crimes against children's code and some tribes, again, may only want to amend or pick a few of these crimes out and stick them in an already existing code. So [INAUDIBLE] though if you don't have findings and purpose pieces in those existing codes, it would be a good time to at least consider going back and putting those pieces in your code.

So again, you see Zuni. They're starting out here kind of giving you an idea of how the Zuni Pueblos feel about their young people, their youth. And they're saying they're the most important resource. And that their welfare, the children's welfare is paramount. They want us to secure for each child before the court the care and guidance that it's in the best interest of the child. And also they're incorporating here, without listing them all out, the customs and cultural values of the Zuni.

So what that would mean to me if I were a visiting tribal judge there I would say, oh, OK, well that's important here. The customs and cultural values of the Pueblo of Zuni, I need to ask for some guidance on that. I might need to meet with a few elders that the court clerk could arrange to help me understand this piece so that I'm doing the best job I can to incorporate what the Zuni say here that is very important to them.

They also want to preserve and strengthen family ties and a child's cultural and spiritual identity to help the child become a productive, well-adjusted member of that community. So again, I'm going to need to have some background here. I'm going to need to have some guidance. So and in some children's codes it does even provide for maybe a panel of elders to be selected by the Supreme Court of the tribe. And these elders which sort of serve as a resource for tribal judges who might be sitting on the bench who are not Pueblo of Zuni members. So again, really strong proponent in this publication of keeping this publication tribal and having it reflect the unique customs, traditions, values of the tribal community that's putting it to use.

And the last example I think you're going to see here will be the federal piece. And we selected the Indian Child Protection and Family Violence Protection Act in the federal system. We put a link there if you wanted to click on it. It would take you right to the findings and purpose. Again, that's what we're demonstrating here. It's different variations of how jurisdictions are approaching the findings and purpose piece.

Here you see that Congress is making the findings, whereas in the tribal code it's the tribal government usually making the findings. And they're finding that, here are the issues that Congress is seeing, and I'll read couple of them. Incidents of abuse of children on Indian reservations, they're going grossly under-reported. And that under-reporting is often a result of a lack of a mandatory federal reporting law. So this is where we get that mandatory reporting piece from the federal government. But again, just showing you the findings and purpose.

I think there's one more maybe federal slide here. OK. This brings us to the purpose. The federal piece has broken this out into two pieces. Again, totally up to the team. The purpose is to require that reports of abused Indian children are made to appropriate authorities in an effort to prevent further abuse, to establish reliable data for statistical purposes. And so you can see how those purpose pieces right there feed in directly to the findings we saw on the previous slide, identifying the issues that Congress saw happening.

So that would be your examples. We've given you definitions of findings and purpose. The team will have some different exercises and worksheets. We'll look at a couple of those here in a minute. And then this will be your exercise. And I want you to kind of just take a look at how the exercises are laid out.

You'll see the majority of exercises in here are going to follow the same format. It's got learning objectives in it. Those are important, because it keeps everybody focused. Because there are lots of different rabbit holes people can go down. This is what we were supposed to be addressing in this exercise.

It'll have reading. And the reading is actually in the guide in most instances, so it'll refer you back to reading certain pages or certain chapters. And then provide tips for the drafting team leads. So again, depending on how large your team is, you might have a note taker. You might have sort of a team lead that schedules the meetings, the Zooms, however you decide you're going to do it. Who will print off and pass out these worksheets as everyone sits around a table working on this project together. So we'll provide some tips for team lead to help them get ready. So hopefully you'll have a smoother and more efficient meeting.

So here are the exercise questions for chapter 7. Again, just giving you an idea. Again, this chapter is really focused on drafting the findings and purpose. Compile, and Heather mentioned, these are sort of building blocks. So go back and compile the information from part one for easy reference. That will have been an exercise you've already done. Those papers are already completed. Then everyone needs to review the exercises from part one and the worksheets. You're going to use that information.

We really tried hard not to have the team have to go through exercises that we're not really going to build on. We really wanted to make each particular exercise very, very useful. And sort of in these first few chapters building upon itself.

Discuss as the group what customary tribal beliefs are held about children and the children or use role in your community. So you can discuss that. The note taker will be taking those notes. Discuss the team's assessment of gaps in your existing tribal code. That's one of the reasons it's super important to get your child to advocate voice, tribal victim advocate voice, maybe your child welfare.

You don't want your teams to be too big, because it's really hard to get schedules together, but those fundamental stakeholders that you feel you need to have at the table to address the issues in your tribal community. And those people often come with, hey, we've been working. We know that these are the gaps we see. This isn't getting prosecuted or we don't have this crime, those sorts of pieces of information.

And discuss what guiding tribal principles will be important for anyone reading and interpreting your future code or statute. Again, thinking about findings and purpose here. What do you want non-members who may be sitting on the bench, who may be prosecuting these crimes, what should they know and what should be their guiding principles with respect to tribal customs and tradition?

OK. So that's the exercise. And the next slide will show us an example of the worksheet that this team is going to be using. And the team as a whole can decide-- some exercise you'll pick and choose which questions you want to answer. We just tried to be really comprehensive here going over the what, the why, the children, aspects about the children, and how these findings and purposes-- just general information so you can draw.

So in the end, you're going to be having tribal examples with a summary. You're going to be having a federal example to take a look at. Then you're going to put your worksheet down and say, well for our tribal community this is what we think we need. And you'll be able to, after you get all that information together, to start thinking about drafting the findings and purpose.

I wanted to also-- we mentioned earlier that we designed this code for you to work through everything if you wanted to design a whole code or to pick and choose by pieces that you want to see in your code. And so we really wanted to just kind of have you look at an example of an overall worksheet. And you can kind of see here, I don't know if you can see it on your screen, but different questions.

And the team goes through and makes check marks. Yes, we want to do this. We want to do a comprehensive code. We do not have a code. And this will be your guide to keep the team focused. You may not need to participate in every single piece or exercise, but this will help keep you focused as to which pieces of the guide and which worksheets and exercises are really critical for you to get the code it is that you're wanting and one that reflects the customs and traditions of your tribe. I'm going to turn this over to my colleague Michelle.

OK. Hey, everybody. Take a deep breath. This is a lot of information I feel like coming at all of you, especially if you haven't had the opportunity to kind of thumb through this guide, either the prior version of it or the newly revised version of it. So just before I kind of get too much into drafting the code, for myself I worked as a tribal prosecutor for one of the tribes here in North Dakota for quite a few years. And I've also worked as a tribal attorney for close to two decades now.

And so in my role I've been pulled into a lot of different projects where I have been tasked with reviewing tribal codes, proposing amendments to tribal codes, and drafting tribal codes. Some of those experiences have involved me working independently. And some of those have involved me working in a team approach.

Where I find that the team approach becomes really helpful is in the areas that kind of have these really far reaching implications for tribal communities and really touch on almost every household in the tribe. And certainly when we're looking at developing laws that are going to impact what we define as crimes against children and how we respond to those crimes, this particular subject matter has far reaching consequences.

And one of the benefits to the team approach I think is really that you get different perspectives from the community, from those stakeholders in particular in the community who are working with and for children and families. So you can get a better idea as an author or a writer of code as to what's really important. And kind of pulling off of and making this transition from what Kelly is talking about really with the findings and purpose statement, it's really important that we capture some of that discussion of those groups of stakeholders and play some of that into our codes.

Number one, as Kelly points out, it's really an integral part to the enforcement of our laws. When we get judges who are on the bench, it can really help the judges to understand this section of the law and how it was intended to be applied. And then I also actually worked as chief justice for one of our appeals courts here in a tribal community in North Dakota. And those findings and purpose statements are really also very important for appeals on some of these cases. Because oftentimes when people appeal cases, they may have some jurisdictional questions, but it also might be questions that require or argue that maybe a trial judge didn't properly interpret or apply the law. And so those purposes and findings provisions are really important to that and kind of also send that message for what is the intention of your tribal government when they get to the point where they actually enact and implement these codes?

And so there's been-- and I also kind of want to off of that piece and off of my experience just talk really quickly about a couple of the points that Heather touched upon too about the structure of this code. I think it's really a valuable resource for someone, as I said, who's worked with teams of individuals in drafting laws. You may have people involved in your team that are not lawyers. Oftentimes that's the case and that's a great thing to developing comprehensive laws that are helpful and useful to our communities. But along with that often goes people not necessarily understanding how one law intersects with another law. And kind of how we go through the process of deciding what's needed in the community and then moving that forward to deciding or documenting why this is needed in our community. And then when we get to the stage that I'm going to talk about, which is really putting pen to paper and saying this is how we want our tribal code to read. And that's getting us to the drafting of the code.

So when you look at a lot of those flow sheets and you look at some of the charts that we've included, they're really two-fold. Not everybody likes to sit down and just read a big narrative, some people are very visual thinkers. And so these tools should really help to explain the process in a really good way regardless who is on your team. The other thing is that the worksheets, by just checking the boxes and completing those along the way, you're really helping to create a legislative history for your tribal code. And that's going to be really helpful to you when you bring that nice polished document before your tribal council or before your larger community and you have to justify and explain and answer questions about why this team felt these provisions were important.

OK. So I want to move us into the next section of this kind of introduction to our Crimes Against Children Resource Guide. And what I want to talk to you about are kind of the drafting of the code. One of the first considerations that Kelly mentioned that your group or you as an individual might need to clarify with your legislators, your tribal council, is what is it that you are tasked to do or what is it that you want to do? Are you looking to develop a more comprehensive set of crimes against children to define all types of crimes against children in your tribal community? Are there particular crimes that you're seeing maybe a rise in and you feel like your existing code either isn't there to address it so you're not equipping your prosecutors and your law enforcement officials to be able to respond to these kinds of actions?

Or it could be-- I'm frozen again. Oh, there I go. It could also be that maybe you have an existing code provision but you're finding it's outdated or maybe not worded in a way that enables those cases to be brought before your tribal court and successfully adjudicated. So you really kind of want to take some time to think about that.

And I just kind of touched on why I feel that the team approach to drafting is very helpful, again, because when we're looking at these laws we're oftentimes not simply focusing on the law enforcement response. We may have other provisions, for example, in our codes that apply to stakeholders. So school officials, for example, are oftentimes in our tribal code considered to be mandatory reporters. Well, they're going to want to know and help to inform what they have to report on. And so having them involved in the discussion can be important not just to defining the crimes, but also understanding their role in response to the enforcement of those crimes once they're defined in your code.

So as we stated there is a flow sheet that kind of helps your group to get together, sit at the table, to understand what it is that the steps are going to be that you're going to collectively take to move yourself through the process. For each crime there is often going to be a multiple step process before you actually get the written crime pulled together. It may involve compiling, reviewing, editing, and organizing information such as any existing laws or codes that you have that might intersect. It might include pulling together data or information relevant to that crime.

If we are drafting remedial provisions or sanctions, for example, you might want to pull together what are some of the resources in our community that may be helpful to impose for part of a sentence. Do you have counseling? Do you have probation services? Is it simply jail and fines that are at option? So getting that information together is going to be important.

Selecting code provisions then are also going to be important. Looking through your existing tribal code is helpful in this regard to see what it is that you maybe already have on the books and what it is that you need to develop from scratch. Step three is typically going to be the drafting phase. And this is going to be really where you might be pulling together examples of other tribal codes. Looking maybe to some state and federal laws to see if there are provisions in those that you want to also incorporate into your tribal code. That can be very helpful.

And that's one of the things that this resource does too is we have some examples in the book already for you to kind of kick start that research for you. And then once you kind of pull that research together and that code information together, then you might get to the point where we're ready to start drafting. Where we've identified what code provisions we like, maybe we've eliminated those we don't like. And we're starting to get ready to say, this is what we want written into our tribal code.

And then, of course, we have the final draft for the tribal code or statute. When you as a team are happy with what you've pulled together, everybody's had an opportunity to review it, to edit, it to have their final comments, then you're going to move it forward through the enactment or adoption phase. And that's going to look very different for every tribe as well. And that's something that you're also as a team going to want to know early in the process.

So some tribes, for example, before a code can be passed by their tribal leadership it might have to be open for a specific period of time for public comment. In other instances that might not be required. And so to know what your process is, you're going to want to take a look at your tribal constitution to see if there's any guidance there. If there's not, there might be guidance in your tribal code about the steps that need to be taken to amend or add to your tribal code or create your tribal code. Those are a couple of good starting points for that.

OK. So you know we've gotten ourselves organized. Maybe you've got your committees or your subcommittees together to help inform your group and to let you know what they feel is important and the most pressing issues that your team should be focused on when you're drafting code. Again, assessing other tribal code examples. You know it used to be that it was very difficult to get examples from one tribal code to another. But in the last decade plus we've really seen an explosion of tribes publishing their tribal codes on their websites. Some have published their law and order codes on sites such as the Tribal Court Clearinghouse. NARF's Indian Law Library is an excellent example that really makes finding examples from other tribes and what they've put into their laws really accessible and at your fingertips.

There's also training and technical assistance providers that are able to help you in this arena. So don't hesitate to reach out for that kind of assistance too if you're looking for examples for your team. And I think at the end of today's webinar there will be some information about how you can request that kind of assistance.

The other thing is these time and task meetings, I can't stress enough how important this is. Heather mentioned, she showed you an example of we're going to do this. And here's the team member that's going to be assigned. And here's how long they have to complete this task of finding example tribal codes or collecting data. Time and task planning is such an important part of this, because a lot of times-- I think you all probably have had this experience where if you're working in a tribal justice system, you're involved in a lot of moving parts. Oftentimes you're fulfilling your direct duties as a service provider to the community, but oftentimes you're pulled into various committees and planning groups, including code planning.

And so one of the things that the time and task planning can do is really help you to timely move the process forward without losing steam and then nothing being accomplished. That's really, really important. And then again, having your team understand that tribal code adoption process is another thing that's going to be important.

The getting organized section in this code development resource guide is also really helpful to you. It gives you examples of some of the types of documents that you should gather and make sure your team is familiar with. It also gives you some tips on any gathering information such as relevant tribal court opinions that might pertain to addressing crimes against children. Also it can help you to gather together maybe work that's already been accomplished by those who are working with children.

So for example, you might have some vision statements and mission statements out there with some of your schools, your service providers who are working with children and family, that you might pull together that can help to inform your process. You also want to print off a copy of the Indian Civil Rights Act, because that impacts our tribal courts and particularly our tribal courts sentencing. So you want to make sure people have that. And you also want to make sure that your group has a dictionary handy so that you understand collectively how terminology might be interpreted and applied by the courts. And when we say a dictionary, I think probably the most handy dictionary will be a legal dictionary such as Black's Law Dictionary. And then of course, using the guide and making sure each team member has a copy of the guide handy is going to be important.

The other thing that I think it's really important, particularly in this subject matter of crimes against children, is that your committee members or your team have has an understanding of victimization. Not everybody's going to come to the team from the same background or the same cultural competency or historical competency or victim competency. And so it's going to be really important that everybody has that understanding. We want to make sure that the safety of the children and offender accountability is going to be at the forefront of the work we're doing when we are trying to create tribal codes.

And also really important and at the forefront of the work is that any of the tribal codes that we draft and that are ultimately implemented reflect the values, the customs, beliefs, and traditions of the tribe wherever it is appropriate and possible. And there's a lot of ways to do that, even in instances where it may not be appropriate, for example, to go in depth on a ceremony for example. There still might be ways to incorporate that into your code in a more general sense.

And having this understanding among your group helps to create an environment of mutual respect. It helps us to create laws that ensure that the victim's voice is heard. It also helps the group to draft segments of the code in a way that is victim-centered and informed.

And so when we're trying to do this, it is important that team members who have this mindset, education, training, understanding, share what resources you have. Maybe even seek out some training and technical assistance to help get your team onto the same page before you get started is also a helpful thing. And then also making sure that you have representatives who can really inform the group about the traditions and cultural practices of the tribe. That's also going to be an important part.

And that can be a little bit challenging in some communities I realize, especially those communities where we might have a multitude of different tribes that have come together within one court system. But again, there are workarounds for that and there are examples of tribes that have been able to accomplish that in codes. And that's another area where technical assistance can help. And pulling examples from other codes can also be helpful. And then lastly, making sure that when you have team members at the table that they understand that their voice is valued and that they have an opportunity to have input. And that we're not stamping out their ideals and that we are really being receptive to thinking about these issues in a comprehensive way.

So when we're assessing tribal code examples there's other things that I think is going to be important. As we review, I've said it might be a good idea to pull what other tribes have done. And it is a great opportunity for you to not re-create the wheel, but simply replicating what another tribe has done may or may not work for you. And that's something that your team will want to talk through and discuss. You might have distinct differences in history, in culture, in tradition, in child rearing practices, in values, in what is acceptable and not acceptable when we're raising children and when we're establishing what would constitute criminal behavior.

We also want to make sure we keep savings clauses in our codes. And again, that we're setting time and task meetings to make sure we have a good process to keep us moving forward. And that we are not just drafting one document and sending it out as is. That we're also building in time to review, edit, and discuss and as well as that we're building in time to go through the proper public comment period if that's required or the procedure that will be required before the code can be adopted. That's going to be really important to setting realistic examples.

So in the code not only is it going to walk you through that step by step for each different crime that you might be looking at defining in your tribal code and then have all those the forms to help keep you organized and working together and keeping on task. But there's also an appendix that contains a glossary of terms that you might draw from and some of the acronyms. Acronyms are also something that a lot of us when we've been working in these arenas for a long time, we throw out acronyms like everybody understands them. And we need to be really careful with that. Because acronyms, number one, can mean different things to different people. And we want to avoid some of that. But the appendix has a list of glossary and acronyms to help you understand some of the references that are within the guide.

We also have some expert excerpts from the Introduction to Tribal Legal Studies series that is available through TLPI, particularly chapters 12 and 13. These can be really helpful to getting your group onto the same page and at least having a baseline understanding of things like tribal criminal jurisdiction. That's going to be really important that everybody understands that. Because we want to enact codes that are helpful, that are useful, and that are legally enforceable, right? So there's that portion as well.

OK. And with that I'm actually just going to stop right here. We have some available resources and technical assistance related to the use of the guide. And then also once your team pulls the guide and starts working with it, you may have some additional training and technical assistance needs at various points. So I'm going to turn that to Heather to have her go a little bit further into that.

Thank you, Michelle. And thank you Kelly and Michelle, I learn something new from you I feel like every time I have a conversation or get to interact with you also. So just wanted to get that out there and say it was a pleasure working with both of you on this resource.

So yes, as Michelle mentioned, there are additional resources available to assist. So here we've just linked a few from TLPI as well as the Tribal Judicial Institute, and Fox Valley, the National Criminal Justice Training Center. TLPI does have a legal code development series, so if you are looking at other pieces of your tribal code you might want to take a look at our other series and those might help inform your drafting goals.

We've also provided here our contact information. We'll also share some more details on how to request any technical assistance in the use of the guide. We're really just going to push those towards the National Justice Training Center, so that'll be that info email that you see up above. And from here we've left plenty of time to have conversation and questions and any discussion that you all are thinking about since, as Michelle said, we did give you a lot of information today. And you might have opened up the resource when you download it and said, oh jeez, almost 300 pages. What is this? So please, we're here to have conversation and answer any questions that you may have.

Heather, I wondered if you could say a word-- as we were trying to put this together, we started looking at the piece Michelle just presented. And we couldn't find anything very little on drafting tribal codes. And then talk about how we came to have the information to put in there. But also I would be thinking about the team member who says, look, we need a children's code, but I'm not a lawyer and I don't know how to draft laws. And I don't know what a lot of this means. So how could I possibly make a difference? I'm really scared to even start something like this. What would you say?

Yes. Thank you, Kelly. We thought we thought about that immensely during the creation of this resource. And that's why we took such a comprehensive approach to provide as much resources as we can to make everyone feel comfortable and prepared, as well as provide the necessary background information to talk about why, for example, a victim advocate's voice is just as important to the drafting team as maybe a consultant that you hire to code draft, including folks from your court team.

Those voices are just as valuable. And we did that. We tried to express that through some of the background information and really trying to flesh out those conversations in the earlier parts of the guide. And again, thinking through the process of kind of working through the guide comprehensively and how that foundational background information can really provide the team with an understanding of not only underscoring the importance of the work and protecting tribal children, but also how it's important to work together and value the voices of community.

And how the importance of laws really reflecting the tribal communities' values and beliefs, right? Because we've seen that too often where some of this code work is approached as a model or the feds directing tribes as to what things should look like, right? So here in working with this topic and these codes, it really is dependent on doing reflection on why we need to protect our tribal children and the role they play in our communities. So that's why it was super important to include some-- you might flip through the resource and say, oh wow, this is like really basic stuff. Grab a dictionary. Well, that's actually super helpful, right? Especially when you're not used to reading legalese or not as familiar with jurisdictional issues.

So that was our approach. And like you said, Kelly, sometimes folks may have doubt into their voice that they may bring to a team. And we tried to do our best to empower each individual with the orientation and the tone that we took to this guide and all of TLPI's resources really.

Yeah, I think there was a there was a question that came in on the Q&A also about whether or not there would be a draft code that would be available for participants or is it just the guide. And there is no comprehensive model code or sample code for this. There are, however, at the very-- so in one section of the code it might deal with child abuse or child neglect. And then it will explain a little bit about what child abuse or neglect is. And then it will go into later on there will be some examples of existing tribal child abuse code provisions that your team can look at.

And remember that this resource is to be used to define crimes against children. So it's not intended to replace more like kind of comprehensive children's codes that might deal with child deprivation proceedings where we're removing children from homes where social services is involved. That's a little bit different process. This guide is really there to define what will constitute a crime when perpetrated against a child, to enable therefore for law enforcement to conduct necessary investigations and make arrests, and to empower the prosecutors to be able to file criminal charges against people who violate these types of provisions.

And so in that regard, it really is going to be up to the tribes to decide for themselves what they feel will constitute a crime and how they want to define child neglect in their community, for example. And I would just say kind of in general, I've been involved with development of some sample codes. Although some of them have the title model code on, which I always try to shy away from. I think there was one that went out on another topic that I was involved in. The reason I'm not really a fan of the use of model is I think that tends to send a message maybe to the reader that this is a best practice or the best code. When really I think the best that anybody can do in a comprehensive way would be to provide examples or an example.

But tribes historically I think have developed a lot of their current written codes in a responsive way to these kind of attacks on sovereignty and attacks on jurisdiction. And so for many years we've seen tribal codes developed with that kind of pulling from other laws. Well, the state code says this so let's put it in here. And if we do that, then we're going to get that respect as a tribal judicial system that we should have.

And I think a lot of tribes are really moving away from that approach in code development for a couple of reasons. Number one, I think that a lot of tribes have found that not to be very helpful in fostering the outcomes that they want when they're working with people through their tribal courts. And I think number two, as we have an increased legal understanding of sovereignty and of jurisdiction and the inherent jurisdiction and sovereignty of tribes, tribes are really embracing that to ensure that their laws reflect who they are as people and who they are as a community. And so for that reason I think that guides like this are really a very helpful tool to work with your teams in a way that respects your tribal sovereignty, honors that sovereignty, and fosters better outcomes for your children and your families.

That's really important, Michelle. And I feel like that's what we did as a team when we were putting this together, don't you? I mean, we all just really kept going back to that foundational underpinning that tribal codes need to reflect the tribal values, customs of the tribal community that they're serving. And it should be that way.

And I don't like the word model code. I mean, I guess I do maybe for some business practices, but not when you're dealing with crimes that are committed against your children. One case, I wish I could remember the name of it but I'm older and so I'd have to look it up every single time, but it was a case that basically said once tribal codes look like state codes, I'm paraphrasing a little bit. But once they look like an outside jurisdiction codes, that tribes no longer need-- they're assimilated. They don't need a court system anymore. All the values are the same.

And I really took that to heart and have carried it close with me this whole journey. And that really was the underpinning of this code was to empower. Don't be afraid, as Heather pointed out, don't be afraid. If you're not a lawyer, I don't-- there are a lot of law school deans who don't want to hear this out there, but you don't have to be a lawyer to draft some of these codes.

What's important is following the guide, doing the best you can, and then having an editorial process where you get other eyes on it to make edits. Maybe the prosecutor if they're not on the team could help with some edits. And making sure-- I mean, the drafting piece of this that Michelle did was fascinating for me as we sat down to put this together because, as Heather pointed out, we couldn't find much on tips for drafting tribal codes.

We had to kind of sit down as a group. We have some drafting experience. What worked for us, what didn't. What challenges do we have? Every tribe has a different way to get these codes processed, approved. Some have to go through a counsel. Some go through a chief or an assistant chief. I mean, it's all over the board. So All we could do was be familiar with that process.

And know that up front, write it down, and then continue on your journey. Don't worry that you're not a drafting expert. Because let me share this with you, Congress, this is what one of their big functions is to draft laws. Every single time this comes out, new laws, they have unintended consequences. There is no way humanly possible you could imagine every scenario that these statutes are going to be drafted will be applied to. There's just-- not there. It's too much brain power.

Even with a rocking team and you're sitting, turning this all around, working on your exercises. So when you start this, I would just urge you to give yourself the grace and the freedom to know that and embrace it. And say we're going to do the best we can. And you know what? We can amend it. If it isn't right, we can amend it.

And so I just want to point that out. My biggest fear is that some of you out there are very hard working, that you're very committed to children's issues, and you're going to shy away from this because you don't have a law degree. And I'm telling you right now, that's not necessary. It's not necessary.

Yeah. And I think that we were pretty purposeful in our approach in drafting the guide to have it be user friendly to a variety of different stakeholders that might be a part of your code development team. That was really one of our goals was in our experience, for example, whether we're working with our representative from law enforcement, from the schools, whether we're working with a victim advocate, whether we're working with a member of the community who has been appointed to the group at large or a traditional leader in the community. The idea here is that the guide is to be used step by step. And it should be user friendly. And the idea-- and when we went back and did our edits and revisions to it, we really did try to keep that in mind.

And the other thing is, as Heather has pointed out, it is a little daunting when you look at this guide and you're like, holy cow, that's a lot of pages. Sometimes we look at something like that and think, oh, too much for me. But the other part to this guide is you don't have to do it all at once, right?

Not everybody has to sit down and look at this guide from start page one all the way to the back of the appendix. It is intended to be a step by step process, particularly if you're looking at sweeping change and comprehensive change. If you're looking at, OK, I just want to amend our child neglect statute. Because maybe you adopted a statute within your tribe years ago and maybe what would constitute neglect is if every child in the house doesn't have their own bedroom. That might not be realistic for your community, for example, right?

Yet we're charging crimes out for something and we're working in an environment where there's a severe housing shortage and where it's not only culturally appropriate, but a necessity for multiple families to be under the same roof. Well, we don't want to criminalize that behavior. So part of this code amendment process isn't just about improving and placing in what we want crimes to be. Part of this process and the other way you can use this guide is to look at, wow, we have a defined crime that's not really working for us and it's criminalizing behavior that we don't want criminalized. So how do we take this kind of really broad statute and narrow it down a little bit more to meet what we feel should constitute neglect?

And so when you get to that, you can go to those very specific provisions. Pull that chapter. Pull that section. And use that to guide your group discussion. So don't be overwhelmed by the size of the guide. Get an understanding of the table of contents. Know what pieces it is that you need to use. And what you're trying to accomplish with the use of the guide, whether it's comprehensive or individual code amendment, and use it accordingly. And if you have questions about it, don't hesitate to reach out. Any one of us would certainly be happy to help with any questions you have. I don't see anything else coming in into the question and answer. Anybody else have any additional questions for us today?

Well, I have an additional comment. I can't help myself. It's going to be very short, I promise. Heather pointed out at the beginning this is pre-VAWA 2022, Violence Against Women Act, that just was passed. Enacted into law I believe March the 15th maybe of 2022. It goes into effect October 1, 2022. And for tribes that can meet the requirements of the statute, just the relevant piece of it, now there will be on October 1 nine covered crimes that tribes that meet these requirements and wish to exercise this jurisdiction over non-Indians committing crimes in Indian country.

So in VAWA 2013 we had the three crimes. Domestic violence, dating violence, and violation of protection order. Now we have nine. And I just want to point out that one of those new crimes that are covered that tribes can exercise criminal jurisdiction over non-Indians is child violence. So a lot of what we have written here will still be very, very relevant, very important to those tribes who are moving forward to exercise this jurisdiction over non-Indians committing crimes in Indian country.

So if you have any questions on that, Heather, I don't know if we have a link. We can't go over all of it now, it's not the focus. But it fits so beautifully in most instances with addressing these crimes against children in Indian country. Now it's going to be natives that commit the crimes and for some tribes that can exercise this enhanced jurisdiction it's going to be non-Indians committing some of these crimes against children.

[INTERPOSING VOICES]

Oh, sorry, Heather. Go ahead.

Oh, sorry, Michelle. I was just going to say, we did drop a link to the updated definition of child violence that will be effective October 1. I know on the website it kind of looks like that's the law now. It will be effective in October. So we did drop that link. And I believe we're also going to drop a link to an overview of VAWA 2022 that Kelly and some other folks worked on. So we'll be sure to drop that as a resource as well.

I wanted to add too in here that there is a section in here as well, I've kind of mentioned defining crimes a lot I feel like in my comments, but I think a really valuable piece to this resource guide is it will help walk your group through looking at what kind of remedies are going to be available to your judges once someone is convicted of a crime against a child in your community as well. And you know this is another area just in general in terms of responding to crimes where I think we've had a lot of movement in tribal code development, particularly with the implications of the Indian Civil Rights Act and some of the early codes. A lot of tribal codes will say if you're convicted of a crime, you can get X number of days in jail, X amount of a fine, and maybe some court fees, right?

And we become then part of that like incarceration nation cycle. And a lot of those folks are coming or staying within the tribal communities. Either they're serving a jail sentence and re-entering or maybe they have a suspended sentence and they're going right back into the community. And if we limit our interventions to that, oftentimes we're cutting short an opportunity to really make a difference in healing for the victims, as well as offender accountability.

And in some instances I'm also going to say healing for the offender. Because when we're looking at the backdrop of who the court involved people are and particularly when we're looking at familial violent situations, which includes crimes against children, a lot of times we have to take into account or we should take into account some of the implications of historical trauma and that intergenerational trauma that has resulted. And I don't bring that up to excuse criminal behavior. But if we want to work towards remedial measures that stop a cycle, then I think it behooves us to make sure that we equip our judges in particular to be able to hand down sentencing provisions that move in that direction a little bit.

So looking at things like no contact orders. Looking at things like probation and post adjudication supervision. Looking at resources within your community, such as maybe you have culturally based mentoring programs that individuals can be sentenced to. Looking at parenting classes and things of that nature. And making sure that you have sentencing provisions in your criminal sections of your code that provide those opportunities to move beyond just jail and fines I think can be very helpful to fashioning remedies that achieve our bigger goals of intervening in crime, healing for victims, reducing recidivism, and preventing future crimes. That's a lot for us to be working on but I think we've got to keep those goals really high and at the forefront of our mind when we're fashioning these laws and remedies as well.

Kelly, this is Justine. I noticed that you did make a comment in the chat about VAWA 2022. Would you explain that a little bit, please?

Sure. Well, one of the things that folks will see if they watch the video or even take a look at VAWA 2022, they'll see Congress-- I'm going to just pluck pieces of this and paraphrase. One of the things they say is that tribes really have been successful with exercising special domestic violence criminal jurisdiction over those three crimes I mentioned for non-Indians committing crimes in Indian country.

And so tribes are so successful with that Congress feels that tribes-- it's a partial overruling of a Supreme Court case called *Oliphant* that in 1978 said tribes have no criminal jurisdiction over non-Indians committing crimes in Indian country. So Congress recognizes the tribe's success and they increase the number of covered crimes now where tribes can prosecute, criminally prosecuted in the non-Indians committing crimes in Indian country.

And one of the things I remember jumping out at me as I was looking at VAWA 2022 was you see a lot. I think all but one of the nine covered crimes says, according to the criminal laws of the tribe exercising jurisdiction. It's all coming back to the tribe to define the crimes within certain parameters, to define the crimes. That's the first place Congress said people need to look first to the criminal law of the tribe. And then a couple of the crimes they'll say and add these couple of things.

So it becomes increasingly important. It's the perfect time to strengthen crimes like this that we're talking about. And one of the crimes, there are probably three or four that I think you all might want to know about if you're interested in this work, but one of the crimes is child violence. And that is because the tribes that were exercising special domestic violence criminal jurisdiction, VAWA 2013, as they were exercising it there was no way to address the violence against the children. None.

I mean, the officer could show up. The non-Indians committed the crime of domestic violence, also committed assaults against the children. And there was nothing except refer it to federal authorities. There was nothing that officer could do. That's not the case as of October 1. If tribes are exercising VAWA 2022, the crime of child violence really says as defined by tribal law. So these crimes just become so important.

The only crime that really has a federal flavor to it in VAWA 2022 is sex trafficking. And it requires the tribes that are going to exercise over that crime to use the federal definition. And I'm imagining maybe the federal case law that goes with it, that's just my own take. Maybe not, but I think so.

But as far as overruling the *Oliphant* case, now there's nine covered crimes. And so hopefully we'll get someday to the point where it's over all Indians committing all crimes in Indian country. Baby steps here though I think is what's being required by Congress. But I'd never seen that before though. VAWA 2013 did not refer to tribal law. Eight of the nine crimes that we see now refer back to tribal law. And they made it much easier for tribal prosecutors, in my opinion.

We could talk about that another day because I see we only have six minutes left to go. But really quite a wonderful time. And we've been providing the resource, this guide, as we go around talking about VAWA 2022. If you're interested in crimes against children, take a look at this. Take a look.

Thank you for that. And I'm also wondering, we have so many victim services providers on the webinar today and child advocacy center staff. How can people in these roles help inform amending tribal codes or creating new ones?

Well, I'll take that. I'll take that one. Well, first of all, I think that they are essential to informing the process. Because oftentimes they're work firsthand with the people who are victims of the crimes. They're seeing whether or not charges are being filed in cases, whether arrests are being made. If they're not, oftentimes they're seeing why or what the problems are.

So I think that those victims service providers are essential. And one of the things is when we look at initiating the discussion of do you need to take a look at your tribal codes? A lot of times getting together a few people, just inviting them together for a meeting to say, hey, I'm not sure that our tribal codes are strong enough. Or that maybe we don't have enough provisions in there to address the needs of our community. Or maybe we don't have anything and I'd like to talk to you about how we can go about developing that.

Victim service programs, I'm sorry, can be great at kind of getting that process started with a simple call to the local prosecutor, maybe to the chief of police. And saying, hey, can we get together and have a cup of coffee and look through this? And by the way, that's a great opportunity for you to bring the guide, right? Because there's some information in the guide also that kind of talks about the why, the why this is really important.

And then from there to kind of move that process from kind of that informal initial discussion where you've got some of the stakeholders saying, yeah, we're seeing problems in this area. It might be then taking it before tribal leadership and having them help to formalize a code development team. You don't always need that. I found that a good approach because it gives a lot of teeth to the team as they're moving forward. And then it also kind of helps on the back end after you've gone through this process and drafted a code. That way you've kept tribal leadership involved and informed along the way so that you're not met with resistance at the back end.

And then beyond victim service providers, I think that would be important people on the team. Prosecutors would be important. Maybe a tribal attorney or somebody from your AG's office oftentimes is involved. A representative of law enforcement, child protective services is often another group that would be good to have involved. Representative from your local schools. And again, some representatives from the community at large, particularly those people that have an understanding of the family dynamics, the appropriate culture and tradition, and can help inform that process. Those would be some of the really key people that I think it would be good to engage in those initial discussions, as well as to be made a formal part of your code development team.

Well, Kelly, Heather, and Michelle, thank you so much for your expertise in developing this guide for everyone. It's going to be a very valuable tool to all of us. And we're really excited to see what might come of this for our grantees from the Office for Victims of Crime. Thank you.

Thank you, Justine. And we sure hope that this is a useful tool to everyone and that it kind of furthers I think what our collective mission is healthier, safer tribal communities and really kind of preventing some of those traumas to children. So thank you everyone for being on today. And we hope that you find this guide really useful.

Thank you again Heather, Kelly, and Michelle, for sharing your time and knowledge with us. This concludes our webinar today. Thank you to all our attendees for joining us today. We hope you can join us for future webinars. Have a wonderful day.