

NOTTAWASEPPI HURON BAND OF THE POTAWATOMI

**Implementing Criminal Jurisdiction in Domestic Violence Cases
Pursuant to the
Violence Against Women Reauthorization Act of 2013**

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INTRODUCTION

This “Implementing Criminal Jurisdiction in Domestic Violence Cases Pursuant to the Violence Against Women Reauthorization Act of 2013” is a comprehensive document detailing the adoption of the *Nottawaseppi Huron Band of the Potawatomi Domestic Violence Code*, a code that complies with and exercises the return of criminal jurisdiction pursuant to the Violence Against Women Reauthorization Act of 2013. With the assistance of a grant from the National Congress of American Indians, we had the assistance needed for the Tribal Government to engage in the multiple processes to complete the tasks required for the implementation of the *Nottawaseppi Huron Band of the Potawatomi Domestic Violence Code* and develop an avenue for providing access to these processes and work products to other Native Nations. This document, referred to a Manual or Handbook throughout, is the culmination of this work and serves the following purposes:

1. Serve as the historical record of the adoption and implementation of the *Nottawaseppi Huron Band of the Potawatomi Domestic Violence Code* for Tribal Citizens, the Nation as a whole and the general public;
2. Serve as the historical record of the development of programs and services, including for victims, pursuant to the *Nottawaseppi Huron Band of the Potawatomi Domestic Violence Code* and the needs identified by the Tribal Government;
3. Provide detailed information to other Native Nations on the processes engaged in to adopt and implement the *Nottawaseppi Huron Band of the Potawatomi Domestic Violence Code*;
4. Provide recommendations to other Native Nations in their development and implementation of a domestic violence code that exercises criminal jurisdiction pursuant to the Violence Against Women Reauthorization Act of 2013; and
5. Provide access to documents, tools and templates developed by the Nottawaseppi Huron Band of the Potawatomi to provide an avenue for other Native Nations to maximize their resources by utilizing these tools and editing these documents to reflect the unique history, constitution, government and domestic violence code of their Tribe.

This Manual will share the process by which we engaged key Tribal Government Staff, Tribal Citizens and the Tribal community-at-large to both draft and implement the *Nottawaseppi Huron Band of the Potawatomi Domestic Violence Code*. Incorporated throughout these sections are the efforts made to assess capacity, identify needs and obtain the resources required to address those needs, with those entities within the Tribal Government identified as being responsible for implementing the various systems, programs and services discussed so that they could begin developing the financial strategies to achieve their respective goals. Also incorporated throughout this Manual are recommendations, tools and templates that we hope other Native Nations find helpful as they begin the process of implementing a domestic violence code that exercises returned criminal jurisdiction pursuant to VAWA 2013.

ACKNOWLEDGEMENTS

The compilation of this “Implementing Criminal Jurisdiction in Domestic Violence Cases Pursuant to the Violence Against Women Reauthorization Act of 2013” Manual would not have been possible without a grant from the National Congress of American Indians (NCAI). This NCAI Grant enabled the Nottawaseppi Huron Band of the Potawatomi Tribal Government to fulfill the requirements for implementation of the *Nottawaseppi Huron Band of the Potawatomi Domestic Violence Code* while providing access to these processes and materials to other Native Nations. For many Native Nations, it is difficult or impossible to commit the resources to engage in the time-intensive and labor-intensive processes to meet the requirements in the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). What must be kept in mind about impact of this grant-funded project is that the consequence for Native Nations in not exercising criminal jurisdiction pursuant to the VAWA 2013 is the ongoing inability to protect Tribal Citizens who are victims of domestic violence, the inability to provide support to victims of domestic violence, and the ongoing danger to the victim and the community with offenders being free of accountability. The NCAI had the foresight to create grant priorities that exceed the benefit to one Native Nation to offer support to Native Nations throughout the borders of what is now called the United States of America.

Applying for the NCAI Grant, however, would not have occurred without the Nottawaseppi Huron Band of the Potawatomi (NHBP) committing to address domestic violence. We use this language purposefully as the adoption of a domestic violence code that exercises criminal jurisdiction in domestic violence cases pursuant to VAWA 2013 is of critical importance, but not the only consideration. The leadership across the branches of the NHBP Tribal Government has, collectively and individually, equivocally and without question, prioritized a comprehensive and holistic approach to addressing domestic violence that includes implementing:

1. Educational programming;
2. Intervention programs and services;
3. Programs and services that support, protect and empower survivors;
4. Systems to hold offenders accountable and protect victims and the community as a whole; and
5. Programs and services that provide offenders with the tools to end their abusive behavior.

Finally, the processes engaged in, the systems developed, the programs and services established and the documents created that are provided in this Manual are a result of the commitment of numerous individuals including, but not limited to: Nottawaseppi Huron Band of the Potawatomi staff throughout the Tribal Government; Nottawaseppi Huron Band of the Potawatomi Tribal Citizens and community members; National Congress of American Indians staff; individuals at partner agencies involved with the Intertribal Technical-Assistance Working Group on Special Domestic Violence Criminal Jurisdiction; staff at Native Nations involved with the Intertribal Technical-Assistance Working Group on Special Domestic Violence Criminal Jurisdiction; and our local partner agency, SAFE Place.

THE NOTTAWASEPPI HURON BAND OF THE POTAWATOMI

The Potawatomi name is a derivative of Bodéwadmi, meaning a people of the fire or a people who make or maintain fire, both of which refer to the role of the Potawatomi as the keepers of the Council fire in an earlier alliance with other Native Nations in the area.

The Nottawaseppi Huron Band of the Potawatomi is a federally-recognized Tribe that received reaffirmation of this status in 1995 by Congressional legislation.

The NHBP Tribal Government is established and governed by the Constitution of the Nottawaseppi Huron Band of the Potawatomi. The Nottawaseppi Huron Band of the Potawatomi have affirmed their commitment and provided guidance to the Tribe and the Tribal Government by incorporating the unique history, values and traditions of the Nation into the Guiding Principles in Article II § 2 (b) as follows:

- b) Guiding Principles. In exercising the jurisdiction and sovereign powers of the Band, the Tribal Council and other institutions of the Band's government shall be guided by the following principles:
 - 1. Promote the preservation and revitalization of Bode'wadmimen and Bode'wadmi culture;
 - 2. Promote sustainable development strategies and practices to ensure the health and balance of the next seven generations of Tribal Members;
 - 3. Promote the health, educational and economic interests of all Tribal Members, especially our elders and children;
 - 4. Promote efforts that ensure the perpetual preservation and revitalization of the Band's sovereignty and self-determination; and
 - 5. Promote open and transparent governance by providing Tribal Members, and where appropriate, other persons subject to Tribal jurisdiction, with notice and opportunity to comment on financial, policy or legislative business under consideration.

The Tribal Government employs over 150 employees who work for the departments and offices within the branches of the government established in the Constitution including, but not limited to: Communications; Culture and Historic Preservation; Education; Environment; Finance; Gaming Commission; Health & Human Services; Housing; Human Resources; Legal; Membership Services; Planning; Public Works; Tribal Police; and the Tribal Court.

The main offices of the NHBP are located on the Pine Creek Indian Reservation in Athens Township, Michigan. In addition, the Tribe has offices in Grand Rapids, Michigan as there is a significant number of Tribal Citizens who reside in that area. Having offices on the residential reservation and in a secondary

location provides the 1,200 Tribal Citizens enrolled at the NHBP with meaningful access to Tribal resources, programs and services.

The NHBP hosts a website that is maintained by the Tribal Government and is regularly updated. Through this website, Tribal Citizens and the general public have access to information about the Tribe, including the Constitution and all legislative enactments, events, programs and services.

THE NOTTAWASEPPI HURON BAND OF THE POTAWATOMI TRIBAL COURT

In 2005, the NHBP wrote a successful Grant Proposal that provided funding from 2007 to 2010, for the initial start-up funding for a Tribal Court. In April of 2006, the NHBP Constitution was amended to add Article X, Tribal Judiciary, which created the Tribal Justice System as a separate and independent branch of the Tribal Government. The Article provided for a court of general jurisdiction to be called the Tribal Court and an appellate court, to be called the Supreme Court. On January 28, 2012, the people of the NHBP voted to amend the NHBP Constitution. The vote was certified on February 3, 2012. Article XI of the Amended Constitution now governs the Tribal Judiciary.

The NHBP Tribal Justice System is comprised of the Tribal Court, a court of general jurisdiction, and the Supreme Court, an appellate court of last resort. The NHBP Tribal Court currently has two divisions: The Juvenile Division; and the Domestic Violence Division. The latter was developed, in part, to simplify processes and procedures in relation to the due process and other requirements of VAWA 2013.

Article XI § 4 (a) provides that the NHBP Tribal Council has the authority to appoint all NHBP Judges and Justices, and requires that such appointment be by an affirmative vote of at least two-thirds (2/3) of the Members of Tribal Council. Article XI § 5 establishes the minimum qualifications for the NHBP Judiciary as follows:

- a) Tribal Courts. A person may be eligible to serve as a Chief Justice, a chief Judge or an Associate Judge in the Tribal Courts only if he/she:
 1. Has attained the age of thirty (30) years;
 2. Is a licensed attorney in good standing;
 3. Is not a Tribal Council Member or running for a Tribal Council position or a Tribal employee; and
 4. Has never been convicted of, or entered a plea of guilty or no contest to, a violent crime, felony, or a crime of fraud.

The current NHBP Judiciary includes:

- Hon. Melissa L. Pope, Chief Judge. Judge Pope is an attorney who is licensed to practice law by, and in good standing with, the State Bar of Michigan. On February 21, 2011, Tribal Council appointed Judge Pope as Chief Judge of the Tribal Court to a term expiring on December 31, 2014. On December 11, 2014, Tribal Council appointed Chief Judge Pope to a second four-year term that expires in December 2018.
- Hon. David Peterson, Associate Judge. Judge Peterson is an attorney who is licensed to practice law by, and in good standing with, the State Bar of Michigan. On June 18, 2015, Tribal Council appointed Judge Peterson as the first Associate Judge of the Tribal Court for a two-year term that expires in June 2017.
- Hon. John Wabaunsee, Chief Justice. Justice Wabaunsee is an attorney who is licensed to practice law by, and in good standing with, the State Bar of Wisconsin. On December 16, 2010,

Tribal Council appointed Justice Wabaunsee as the first Chief Justice of the Supreme Court for a six-year term that expires in December of 2016.

- Hon. Holly T. Bird (formerly Holly K. Thompson), Associate Justice. Justice Bird is an attorney who is licensed to practice law by, and in good standing with, the State Bar of Michigan. On December 16, 2010, Tribal Council appointed Justice Bird as an Associate Justice of the Supreme Court. With the length of terms varying in order to establish staggered terms, Justice Bird was appointed to a two-year term. On December 20, 2012, the NHBP Tribal Council appointed Associate Justice Bird to a second six-year term that expires in December 2018.
- Hon. Matthew L.M. Fletcher, Associate Justice. Justice Fletcher is an attorney who is licensed to practice law by, and in good standing with, the State Bar of Michigan. Justice Fletcher was appointed on December 16, 2010 as one of the first two NHBP Supreme Court Justices. On December 16, 2010, Tribal Council appointed Justice Fletcher as an Associate Justice of the Supreme Court. With the length of terms varying in order to establish staggered terms, Justice Fletcher was appointed to a four-year term. On December 11, 2014, Tribal Council appointed Associate Justice Fletcher to a second six-year term that expires in December 2020.

The mission of the Nottawaseppi Huron Band of the Potawatomi Tribal Court is to fully implement the delegation of Constitutional judicial authority from the people of the Tribe consistent with self-determination, the sovereign powers of the Nation, traditional values, fairness and justice.

Tribal Court and Supreme Court Opinions are posted to the NHBP Tribal Court webpage of the NHBP website to foster transparency, as well as keep the NHBP Tribal Government, Tribal Citizens, the legal community and the community-at-large advised as to the cases creating binding precedent in the NHBP Tribal Court. The Tribal Court also posts court rules to the webpage to provide notice of and meaningful access to the rules that govern Tribal Court proceedings. The Tribal Court has an open and transparent process for adopting court rules, including a thirty-day posting period during which any person may submit comments for consideration by the Chief Judge before adoption.

The NHBP Tribal Court Staff has grown considerably since the Court was first established in 2006. With the assistance of a three-year Coordinated Tribal Assistance Solicitation (CTAS) Grant, supplemented by allocations from the NHBP Tribal Council, the NHBP Tribal Court expanded in 2013 to add a full-time Probation Officer (PO) and Assistant Tribal Court Administrator (ATCA) to the one full-time position of Tribal Court Administrator (TCA). After a one-year no-cost extension of the CTAS Grant, the NHBP Tribal Council approved these positions as permanent for 2016 and beyond. Also for 2016, the NHBP Tribal Council approved the full-time position of Tribal Court Clerk. In 2015, NHBP received an Office on Violence Against Women (OVW) Grant to hire a full-time Domestic Violence Victim Advocate (DVVA) to provide direct services to victims of domestic violence, teen dating violence, sexual assault and stalking. This process is discussed in the “Developing Services for Survivors of Domestic Violence, Sexual Assault and Stalking” section of this Manual. The Court Staff now encompasses five full-time positions: Tribal Court Administrator; Assistant Tribal Court Administrator; Court Clerk; Probation Officer; and Domestic Violence Victim Advocate.

VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2013

The purpose of this section is not to discuss the history of the Violence Against Women Act. The legislative history of VAWA is well documented and available to the public. We established this section for two reasons: 1) To refer the reader to resources in the Appendix to assist with identifying and understanding the requirements in VAWA 2013 for a Native Nation to exercise criminal jurisdiction over non-Indian defendants; and 2) To acknowledge the dedication of those worked to amend VAWA to return the inherent right of any sovereign nation to protect its Citizens from domestic violence.

Before discussing the resources in the Appendix, it is important to understand the historical context of Native Nations in order to appreciate the importance – and limitations - for Native Nations to address domestic violence. It is not possible in this Manual to delve into the plethora of United States Supreme Court (USSC) opinions that have shaped this area of the law, generally referred to as “Federal Indian Law”.¹ However, to appreciate the importance of VAWA 2013, it is imperative to know at least the highlights of how USSC decisions, U.S. policies, federal laws and shifting attitudes among mainstream America resulted in an epidemic of violence against Native people, in particular with regard to the crime of domestic violence.

Decisions of the USSC have clearly communicated that Indian Tribes are nations with the inherent sovereignty to adopt a constitution, establish a government, establish a tribal court, and adopt laws that govern the people and the Tribal lands. In contrast, the USSC has also issued opinions that limit the sovereignty of Native Nations or limit the exercise of sovereignty. Of significant importance is that the USSC held in *Worcester v. Georgia*, 31 U.S. 515 (1832) that the United States Constitution grants to Congress the exclusive authority to regulate Indian Affairs, called the “plenary power”.

The impact of the USSC creating this “plenary power” is that the laws passed by Congress affecting Indian Country shifted as the attitudes of mainstream America shifted. The attitudes of mainstream America also directly impacted the USSC through the election of the President and the Senate. These attitudes have historically been impacted by the discovery of – and desire for - natural resources on Tribal lands, such as oil and uranium, with the attitudes and policies shifting from supporting the self-determination of Native Nations to advocating for the complete elimination of Native Nations, including the Tribal way of life. Sadly, the end result is that the greed for natural resources plays a direct role in the inherent sovereignty of Native Nations, including the ability of Native Nations to protect their Citizens and community-at-large from violent offenders, as well as criminally prosecute these violent offenders.

¹ With Matthew L.M. Fletcher an Associate Justice on the Nottawaseppi Huron Band of the Potawatomi Supreme Court, we would recommend the following text to learn a more comprehensive understanding of Federal Indian Law: *CASES AND MATERIALS ON FEDERAL INDIAN LAW* (Getches, Wilkinson, Williams, Jr. and Fletcher, Sixth Edition, 2011, West).

In 1978, the USSC issued its decision in *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), stripping Native Nations of the inherent right to criminally prosecute non-Indians for criminal offenses committed on Tribal lands. This decision, therefore, left prosecution of non-Indian criminals who committed violent offenses on Tribal lands to either the federal government or the state, depending on the individual history of the Native Nation, including whether the Tribe had ever had their status as an Indian Tribe terminated by the federal government. As such, the individual history of a Native Nation has a dramatic effect on the ability of a Tribe to protect a victim and the community against violent offenders.

For reasons that only the agencies responsible for investigating and prosecuting crimes committed on Tribal lands can address, the investigation and criminal prosecution of domestic violence offenses have not been a priority in majority of federal districts. This failure to prosecute has contributed to the violence experienced by Native people being far greater than the national average. In the first substantive paragraph of the United States Government Accountability Office's *U.S. Department of Justice Declinations of Indian Country Criminal Matters*, the authors note that "from 1992 to 2001 American Indians experienced violent crimes at a rate of 101 violent crimes per 1,000 person (*sic.*) annually, compared to the national rate of 41 per 1,000 persons". US Government Accountability Office, *US Department of Justice Declinations of Indian Country Criminal Matters* at 1 [GAO-11-167R] (2010). Available from: www.gao.gov/new.items/d11167r.pdf

The United States Government Accountability Office reports in this document that 52% of violent crimes reported from 2005 to 2009 were declined for prosecution. The following serves as a sampling of the qualifiers that appear throughout the document in reference to the multiple tables provided:

- Administratively closed matters were not declined, but were closed in LIONS² for administrative reasons. These include, for instance, matters that were combined with another matter for prosecution and were, therefore, not declined. (At page 3)
- A "Filed for prosecution" includes matters that were not declined, but were closed in LIONS for administrative reasons. These administratively closed matters include, for instance, matters that were combined with another matter for prosecution and were, therefore, not declined (First appearing on page 5)
- Matters received that have not been filed for prosecution, declined, or administratively closed are not included in the declination rate. Trends cannot be discerned by comparing individual years because more matters were pending for recent fiscal years than for earlier fiscal years. As these pending matters are closed, the declination rates may change, particularly for recent fiscal years. (First appearing on page 6)
- The lack of evidence available for violent crimes tends to make them more difficult to prove and, therefore, may result in an increased rate of declination. (At page 7)

² LIONS is the Legal Information Office Network System.

- We did not calculate declination rates for referring agencies with fewer than 50 matters filed for prosecution, declined or administratively closed from fiscal years 2005 through 2009 because a declination rate would have little meaning when based on such a small number of matters. (At page 19)
- Pending matters" includes matters where DOJ had not yet decided whether to charge or decline to prosecute, and 75 matters (reflected in the second data column) that were subsequently filed for prosecution or administratively closed but for which charge information was not available in the data provided by DOJ. (At page 25)

In addition to the qualifiers above, it should be noted that full statistics were not provided by all of the jurisdictions listed. Further, the U.S. Government Accountability Office notes that it "did not calculate declination rates for referring agencies with fewer than 50 matters filed for prosecution, declined or administratively closed from fiscal years 2005 through 2009 because a declination rate would have little meaning when based on such a small number of matters". The devastating result of Native Nations not having the authority to prosecute violent offenders, and the federal or state government failing to do so, is that violence against Native people – and in particular, Native women – is at a rate higher than the national average and, with regard to domestic abuse, sexual assault and stalking, generally at a higher rate than most other communities.

According to the 2011 National Intimate Partner and Sexual Violence Survey conducted by the Centers for Disease Control and Prevention:

- More than one-quarter of women (26.9%) who identified as American Indian or as Alaska Native and 1 in 3 women (33.5%) who identified as multiracial non-Hispanic reported rape victimization in their lifetime.
- Approximately 4 out of every 10 women, or 46.0%, of American Indian or Alaska Native race/ethnicity have experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime
- Of American Indian or Alaska Native women, 49.0% reported sexual violence other than rape in their lifetime
- Approximately 1 in 4 American Indian or Alaska Native women (22.7%) reported being stalked during their lifetimes
- Nearly half (45.3%) of American Indian or Alaska Native men experienced rape, physical violence and/or stalking by an intimate partner during their lifetime.
- Of American Indian or Alaska Native, 20.1% experienced sexual violence other than rape in their lives

The statistics referenced above involve only one study. There are numerous studies, many showing even higher rates of domestic violence and sexual assault in Indian Country. With domestic violence

being a crime that frequently occurs repeatedly over a period of time, offenders have quickly learned that Native Nations were powerless to prosecute them.

President Obama, aware of the problem and committed to protecting Native people, engaged in significant work during his terms of office to:

1. Implement mechanisms of accountability for crimes committed on Tribal lands that are reported to the Federal Bureau of Investigation, including the ultimate resolution to the reporting of the crime, such as recommendations by the law enforcement agency to the prosecutor regarding prosecution of the accused;
2. Implement mechanisms of accountability for investigations submitted to the Department of Justice, including whether files were filed against the accused or not and the reasons for this prosecutorial decision;
3. Establish the requirement for United States Attorneys to meet with the Native Nations that have Tribal lands within their jurisdiction

In addition, President Obama signed VAWA 2013 into law, among other legislation designed to support Native Nations in their pursuit of self-determination.

While VAWA 2013 returns criminal jurisdiction over non-Natives for cases involving domestic violence to Native Nations, there are several issues with VAWA 2013. The first is that Alaskan Tribes were removed without warning or discussion from the proposed legislation right before adoption. This has had tragic consequences for Alaskan Natives and should be remedied through inclusion when VAWA is reauthorized in 2018.

The second issue is that VAWA 2013 places restrictions on who may be criminally prosecuted based on the relationship of the accused to the victim and the Native Nation. VAWA 2013 requires that the accused either does or did have a romantic relationship with the victim or that they have a child together and that the accused have ties to the Native Nations.

The third issue is that VAWA 2013 does not allow for prosecution of non-Indians who sexually assault Tribal Citizens. Like abusers, sexual predators are aware of and exploit the areas where sexual crimes against Native people on Tribal lands are not consistently prosecuted.

The fourth issue is the inherent prejudice that served as the basis for many of the VAWA 2013-mandated requirements. A glaring example of this prejudice is the requirement that non-Indians be in the jury pool. The underlying sentiment for this requirement is that Native people will not give a non-Indian a fair trial. This belief is not only without merit, it is ironic considering the fact that a Native defendant tried in a state or federal court rarely has a Native person on the jury.

While there are more issues with the VAWA 2013-mandated requirements, we are limiting the discussion for the purposes of this Manual and ending with one of the greatest challenges – and the challenge we are trying to address through this NCAI Grant – that of the practical reality that many

Native Nations do not have the resources to implement the VAWA 2013-mandated requirements for exercising criminal jurisdiction over non-Native defendants.

The following example illustrates this issue. To exercise criminal jurisdiction pursuant to VAWA 2013, a Native Nation must provide legal representation to all indigent non-Native defendants. Numerous Tribes are operating their Court on a minimal budget and do not have the financial resources to pay for an attorney for every non-Indian defendant. As a result, the requirements in VAWA 2013 prohibit these Native Nations from exercising criminal jurisdiction over non-Indians, remain reliant on the federal government, or state agency depending on the history of the Tribe, to prosecute domestic violence offenders.

The Nottawaseppi Huron Band of the Potawatomi is honored to be a part of the collaborative movement within Indian Country that has grown out of Native Nations supporting each other on the path towards reclaiming criminal jurisdiction over non-Natives in domestic violence cases. Native Nations are collectively creating solutions to the barriers to implementing a VAWA 2013-compliant domestic violence code. This Manual does not provide the funding that many of the federally-recognized Tribes need to implement the numerous requirements in VAWA 2013 for Native Nations to exercise criminal jurisdiction. It will not provide an avenue to resolve the numerous challenges Native Nations have to exercising criminal jurisdiction over non-Indians. However, through this Manual, the Nottawaseppi Huron Band of the Potawatomi:

1. Shares the processes it employed to lend insight into successful avenues utilized to engage the Tribal Government in making a collective commitment to end domestic violence;
2. Shares our successes and challenges with recommendations that may seek to minimize, if not avoid, the challenges encountered; and
3. Provides electronic access to the materials developed that can be edited to reflect the unique history, values, traditions and laws of each Native Nation to reduce the commitment of resources, including staff time, for developing the documents necessary to implement criminal jurisdiction pursuant to VAWA 2013.

Along these lines, the Appendix includes a document entitled Legal Requirements for Implementation of VAWA 2013 Criminal Jurisdiction that was prepared by the ITWG technical partners. This document provides a summary of VAWA 2013 requirements to gain a comprehensive understanding of the requirements.

In addition, you will find a document entitled “VAWA SDVCJ Federal Requirements Checklist” as Attachment C. This document, prepared by Elizabeth Cook, Staff Attorney in the Legal Department of the Nottawaseppi Huron Band of the Potawatomi, is a detailed breakdown of all of the VAWA 2013 requirements for exercising criminal jurisdiction over non-Indian defendants and a detailed analysis of the Nottawaseppi Huron Band of the Potawatomi, including the Constitution, laws, Court Rules or other documents that will need to be amended or drafted, processes that will need to be established or revised and the department or branch of government responsible for implementation of that

requirement. While the details will differ based on the unique composition and status of the individual Native Nation, this format should be helpful in identifying VAWA 2013 requirements, identifying and analyzing the steps for implementation, assigning tasks and tracking progress.

It is the resilient approach of Native Nations that has been so evident throughout the ITWG that brings us to the second reason for including a section in this Manual specifically on VAWA 2013: Honoring the warriors striving for Native Nations to reclaim criminal jurisdiction in domestic violence cases.

The epidemic of violence that Indian Country is forced to endure is a disheartening reality that Native people live with on a day-to-day basis. While it would be an understandable response to become entrenched in the bleak tragedy of violence, Native political leaders, spiritual leaders and Tribal Citizens – many having been victimized by violence themselves - have emerged as fierce advocates for ending domestic violence, sexual violence and stalking.

The individuals who have advocated over the years, some advocating for decades, are tireless warriors to whom we owe a debt of gratitude. While the United States government has shifted approaches to Indian Country since it was founded, in part in response to the desires of mainstream America, there has consistently been opposition to Tribal sovereignty. Today, that opposition is both well-funded and vigilant in seeking avenues to diminish, if not eliminate, Tribal sovereignty, self-determination, self-governance and self-reliance through economic enterprises. An unfathomable aspect of this opposition is the shocking disregard for the safety of Native women and children, as demonstrated by the recent case of *Dollar General v. Mississippi Band of Choctaw Indians*.

In this case, Dollar General fought jurisdiction of the Mississippi Band of Choctaw Indians when an employee of Dollar General, a business leasing land from the Tribe that also participated in a program for Tribal youth, sexually assaulted a thirteen-year-old boy twice on Tribal lands. When the Department of Justice failed to prosecute this sexual predator, this child's family engaged in the only avenue available for holding Dollar General accountable for victimizing this child; they filed a civil lawsuit in the Mississippi Band of Choctaw Indians Tribal Court. This child then had to endure even more years of victimization with Dollar General contesting jurisdiction after having consented to the jurisdiction of the Mississippi Band of Choctaw Indians when it leased the land and again when it consented to jurisdiction by voluntarily participating in a program for Tribal youth. The fact that the USSC was split four to four, thereby upholding the decisions of the Mississippi Band of Choctaw Indians Tribal Courts and federal courts that properly held that the Mississippi Band of Choctaw Indians had jurisdiction over Dollar General with the death of Justice Scalia.

The case of Dollar General not only highlights the reality of the Department of Justice failing to prosecute a sexual predator that preyed on a thirteen-year-old child, but also demonstrates the resilience of Indian Country. Native Nations did not remain silent. The National Indigenous Women's Resource Center and (all partners) hosted the Quilt Walk for Justice on the day of oral arguments before the USSC. The Nottawaseppi Huron Band of the Potawatomi was proud to send the largest Tribal delegation of almost 50 people to the Quilt Walk and was honored to have the Chief Judge invited to speak at this historical gathering. While an amazing example of grassroots activism, the Quilt Walk for

Justice was but one event in the efforts of numerous individuals who have tirelessly fought for the reclamation of criminal jurisdiction by Native Nations, persevering - sometimes in the face of viscous attacks arrogantly and purposefully grounded in prejudice - and frequently in times of devastating violence, where the perpetrator goes without punishment and the victim without justice.

We honor those warriors with gratitude for their strength and determination that has fulfilled the sacred duty of striving in all actions to preserve and protect the sovereignty of each and every Native Nation for the seventh generation yet to come.

INTERTRIBAL TECHNICAL-ASSISTANCE WORKING GROUP ON SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION

The Nottawaseppi Huron Band of the Potawatomi began its efforts to adopt a domestic violence code that would implement criminal jurisdiction over any person who committed domestic abuse on Tribal lands pursuant to the VAWA 2013 by participating in the Intertribal Technical-Assistance Working Group on Special Domestic Violence Criminal Jurisdiction, known as both “ITWG” and the “Pilot Project”. The delegates participating in the Pilot Project included Elizabeth Cook, Staff Attorney and official delegate to the Pilot Project, the Hon. Melissa L. Pope, Chief Judge of the NHBP Tribal Court and alternate delegate, and Duane Sprague, Chief of the NHBP Police Department and alternate delegate.

The ITWG technical partners provided multiple avenues to gain a comprehensive understanding of the VAWA 2013 requirements, the implications of these requirements and the consequences if they were not met. One such avenue that is of great importance is the in-person ITWG Meetings.

We will discuss the value of the in-person Meetings momentarily, but must first recognize the magnificent work of the ITWG Technical Partners. While the organization and hosting of the ITWG Meetings took an enormous amount of work, it was only a portion of what these Technical Partners have provided. The Technical Partners critically reviewed VAWA 2013 to clearly and succinctly identify the requirements to exercise criminal jurisdiction over non-Indians in domestic violence cases. To achieve this goal, they had internal discussions, reached out to Tribal partners, and while some of these Technical partners were involved with the process that resulted in VAWA 2013, they reached out to others to have a comprehensive understanding of how and why these requirements were integrated into VAWA 2013. A direct result of this work was a critical analysis of potential threats to VAWA 2013, as well as Tribal sovereignty. The amazing individuals in these Technical Partner agencies then created tools for teaching about these requirements that included everything from in-person trainings to webinars to phone conferences to print materials to electronic materials. There are no words to truly articulate the magnitude of the efforts of these individuals and agencies. Perhaps it can be best described by stating that the hard work of our ITWG Technical Partners is so profound that the future seventh generation will experience the benefit of their dedication through the protection of Tribal sovereignty and the protection and healing of survivors of domestic violence.

One benefit of immeasurable importance was – and is – the in-person ITWG Meetings. The in-person ITWG Meetings provided a forum for Tribes to collectively: review and analyze VAWA 2013 to identify requirements for exercising criminal jurisdiction over non-Indians in domestic violence cases; critically analyze these requirements in relation to the resources required; create solutions to challenges; share victories; share challenges; share resources; request guidance; anticipate threats to sovereignty; brainstorm responses; and build a united voice in protection of Tribal sovereignty and Tribal Citizens victimized by domestic and sexual violence. The Native Nations that implemented a VAWA 2013-compliant domestic violence code early on in ITWG graciously guided the remaining Nations by openly sharing their experiences at ITWG Meetings. They provided tremendous guidance to the Nations still in the planning stages. These conversations delved deeper into the practical – and often unexpected –

challenges as the conversations were no longer hypothetical. Their openness enabled NHBP to be proactive in the planning process.

It is important to note that the problematic provisions in VAWA 2013, as well as the overall political climate, including that we expect continuing challenges to Tribal sovereignty generally and VAWA 2013 specifically, created a commitment among the participating Native Nations to collectively work together to defend both. The shared understanding of the pain and frustration of those VAWA 2013 provisions that reflect ignorance of Tribal Justice Systems was not only comforting, but empowering. These deeply emotional ties will keep the Tribes that participated in ITWG connected.

Of critical importance to the benefit of the ITWG for Tribes was that the travel expenses for in-person Meetings were usually covered for one, if not two, representatives from each participating Tribe. There are numerous Native Nations that do not have the funding to attend conferences, trainings or meetings, especially if out-of-state. The Native Nations that do not have the funding to send staff to out-of-state trainings likely also do not have the resources to implement every VAWA 2013 requirement to exercise criminal jurisdiction over non-Natives. These Tribes have the greatest need to be involved with the frequent discussions and brainstorming sessions, both formal and informal, on cost-effective solutions (especially to unanticipated implementation costs) that occur at ITWG Meetings. Usually, these Tribes would simply miss out. With ITWG, however, they were able to attend the Meetings and participate in the discussions.

With ITWG continuing as of August 2016, we are hopeful that the individual and collective commitments will continue to strengthen and grow.

NHBP DELEGATES TO THE ITWG, THE VAWA ENACTMENT TEAM & THE VAWA WORKING GROUP

A legislative enactment does not exist in a vacuum; it assigns processes, tasks, programs and services, both directly and indirectly. The ITWG Meetings, materials, webinars, phone calls and other resources highlighted the processes, tasks, programs and services required by VAWA 2013, as well as provided invaluable feedback on the challenges and successes of the Native Nations that began exercising jurisdiction early in the Pilot Project process. With every Native Nation being an independent and sovereign nation with a unique history, values, traditions, language, government and citizens, the ITWG Delegates knew the importance of utilizing the information obtained through the ITWG as guidance for the development and implementation of a domestic violence code at NHBP.

To facilitate the process, the ITWG Delegates decided to convene the NHBP partners that would be assigned responsibilities in the domestic violence code, as well as NHBP partners that could potentially be assigned responsibilities and partners that may want to be involved with the Tribe's efforts to address domestic violence. These partners included: Legal; Health & Human Services; Tribal Court; Tribal Police Department; and the Tribal Prosecutor.

These initial meetings were, in fact and as communicated, preliminary discussions on the adoption of a domestic violence code that incorporates all requirements in VAWA 2013 to exercise criminal jurisdiction in domestic violence cases over Natives and non-Natives. These partners were convened twice with the promise of additional and more formal meetings as the code came closer to fruition. The purposes of these two initial meetings were to:

1. Advise that NHBP was authorized by Tribal Council to participate in the ITWG;
2. Introduce the ITWG Delegates;
3. Request partners to share their considerations for a domestic violence code;
4. Engage in preliminary discussions on processes, programs and services that would need to be created to fully effectuate a domestic violence code; and
5. Identify needs for implementation, including beginning the processes for the commitment of financial resources, both through the Annual NHBP Tribal Budget process and potential grant opportunities.

At the end of 2014, Attorney Cook and Judge Pope transitioned the ITWG Delegates to the "VAWA Enactment Team" and expanded this Team to include Sgt. Kristen Main of the NHBP Police Department, in part as Chief Sprague had been limited in his participation due to his duties and law enforcement involvement was critical for moving forward, and Nancy Bogren, the NHBP Tribal Prosecutor. Sgt. Main and Prosecutor Bogren attended one in-person ITWG Meeting to gain a deeper understanding of ITWG and the efforts of the ITWG Delegates to date. Attorney Cook, as the official NHBP Delegate and drafter of the domestic violence code, attended all of the in-person ITWG Meetings and Judge Pope, as the alternate NHBP Delegate, attended the majority of in-person ITWG Meetings.

In 2015, NHBP formed the “VAWA Working Group”, which included the Tribal professionals convened in 2014, as well as newly hired staff and representatives from additional departments. Utilizing their enhanced expertise through the participation in the in-person ITWG Meetings, conference calls and webinars, the VAWA Enactment Team guided the VAWA Working Group in moving beyond the preliminary discussions to identifying the systems, programs and services required to implement a domestic violence code, including fulfilling all VAWA 2013 statutory requirements for Tribes, to actually beginning the process.

In 2015, the VAWA Enactment Team formed the ‘VAWA Working Group’, which included the Tribal professionals convened in 2014, as well as newly hired staff and representatives from additional departments. Utilizing their enhanced expertise through the participation in the in-person ITWG Meetings, conference calls and webinars, the VAWA Enactment Team guided the VAWA Working Group in moving beyond the preliminary discussions to identifying the systems, programs and services required to implement a domestic violence code, including fulfilling all VAWA 2013 statutory requirements for Tribes, to actually begin formal preparations for adoption and implementation of the code. The process utilized for drafting the NHBP Domestic Violence Code is discussed in detail in the “Developing the Domestic Violence Code” section of this Manual.

It should be noted that Judge Pope did not participate in the VAWA Working Group once attention was solely turned to review of the domestic violence code. At the time the ITWG began, the position of Chief Judge was the sole trial court judge. As such, if a constitutional challenge to the domestic violence code was filed, Judge Pope would be the judge assigned to the case. In order to avoid a claim that she was bias in having pre-determined that the domestic violence code was constitutional as evidenced by participation in review of the code through involvement with the VAWA Working Group, Judge Pope excused herself from all meetings or portions of meetings during which participants reviewed the draft domestic violence code. To avoid even the appearance of impropriety, Judge Pope did not read any provisions, draft or otherwise, until the NHBP Domestic Violence Code was adopted by the NHBP Tribal Council on March 17, 2016. This created special challenges with drafting the NHBP Tribal Court Rules for Domestic Violence Proceedings, discussed in the “Drafting Court Rules for the Implement of the Domestic Violence Code” section of this Manual.

It should also be noted that although the VAWA Enactment Team and VAWA Working Group have completed the tasks assigned, the ITWG continues to exist with an in-person meeting schedule at the end of 2016. Attorney Cook and Judge Pope remain committed to participating in the ITWG to continue to enhance knowledge and skills, share information learned as NHBP moves forward with a fully enacted Domestic Violence Code and to honor the individual and collective commitments of the ITWG.

DEVELOPING THE NHBP DOMESTIC VIOLENCE CODE

This section will provide an overview of the process in developing our Domestic Violence Code (DV Code or Code). Much thought and preparation went into the development of the DV Code. As provided herein and in other areas of this Handbook, the Nottawaseppi Huron Band of the Potawatomi (NHBP or Tribe) was a member of the Pilot Project and was one of the Tribes to submit our formal request for participation in the Intertribal Working Group on Special Domestic Violence Criminal Jurisdiction (ITWG). We were diligent in the early phases of the code writing process and understood, in learning through attendance at the ITWG meetings, learning from other Tribes and the federal partners, the importance of drafting a Code that would withstand legal challenges and be a community driven process.

In drafting the Code, NHBP's goal was to include the Community in the development phase as much as possible, to request their input and participation, keep them informed of the code writing process, and to provide domestic violence awareness information throughout this phase. A practical method of including Tribal Citizens in the process was to invite Tribal member employees from various departments within the Tribe to attend our code drafting, working group, and code review team meetings, among other groups and teams formed during this process. In this way Tribal members were involved and their thoughts and guidance was included in the process.

The Tribal member employees invited to attend the code drafting team meetings included employees from: the Tribal Court; Membership Services; Human Resources; and the Police Department. Representatives from the Culture Department and the Culture Committee were also invited to attend the Code drafting meetings but because of limited persons available to attend and other work related commitments, they provided input whenever possible. Community Meetings were held with the larger community once a final draft was prepared for presentation.

As we know, it is very important to include Tribal Citizen participation and take into account the current cultural aspects of tribal life in the community and its tradition and customs. As is known throughout Indian country and with Indian people, the negative impacts from colonization of America has had devastating effects for the daily way of life for Indian people, that endures to this day. The impacts from this trauma stem from many different areas including intergenerational historical trauma, negative boarding school experiences, forced relocation, assimilation, and sexual abuse and neglect. Because of this shocking treatment of native peoples, not all Tribal members are open to their cultural ways and open to participating in cultural oriented activities.³ And, because of this disruption in the NHBP's ancient practices, including the problem solving and decision making process and practicing of cultural beliefs, it has produced damaging results.

The history of the NHBP is similar to many other Tribes in Michigan and throughout the Country. Following is a brief recitation from a booklet written with the assistance of a respected Tribal Elder and community member:

³ See, Tribal Law & Policy Institute, *Incorporating Culture & Tradition into Tribal Healing to Wellness Courts*, Donna Humetwea Kaye.

The story of the Nottawaseppi Huron Band of the Potawatomi is nothing short of remarkable. Their journey has been long and has required much courage and patience. They possess an exceptional respect for Mother Earth, have a great tolerance for people of all backgrounds and approach life with an uncommon humility. Through their resolve they have endured as a distinctive and united people filled with spirit and pride.

John Rodwan & Virginia Anewishki, "Nottawaseppi Huron Band of the Potawatomi, A People in Progress," *A Publication by the Nottawaseppi Huron Band of the Potawatomi Environmental Department*, August 2009.

NHBP was reaffirmed through the federal recognition process in December 1995, which is not too far in the past. NHBP, through the reaffirmation process established the government to government relationship with the United States which has been in existence for just over twenty years. Prior to the time of reaffirmation, the NHBP existed as so many Tribes did in the United States, purchasing land in fee surrounding their homelands and enduring the shifts in federal Indian policy of the United States. As the title to the story indicates, the NHBP is a people in progress. Because of the forced assimilation practices of the federal government from boarding schools to the forced removal of the Nottawaseppi Huron people from their homeland, NHBP is in the process of relearning and reaffirming their culture and traditional practices.

The Tribe has been revitalizing their custom and tradition throughout the years. The Tribe holds fall and winter ceremonies, an annual pow wow, and are teaching the language. They also repatriated remains of their loved ones in May 2014. They reburied 328 ancestors and 836 funerary objects. This was the largest repatriation in the State of Michigan and perhaps the Midwest. Traditional dispute resolution is also forthcoming to further instill the culture and tradition back into the community.

The Tribe also incorporates its culture and traditions with the Seven Grandfather Teachings and making decisions for the next seven generations. These teachings are an ancient practice and the Tribe has been observing the Seven Grandfather Teachings in most areas of their daily life and involvement within the community and in the outside community. This importance is evident to the Tribe as it was included in their Constitution. The guiding principles as found in Article II, Section 2(b), Constitution of the Nottawaseppi Huron Band of the Potawatomi, provides for the promotion of the preservation and revitalization of Bode'wadmimen and Bode'wadmi culture. It provides for the promotion of sustainable development strategies and practices to ensure the health and balance of the next seven generations of Tribal Members. Including culture and tradition is of utmost importance to the Tribe and the community, as they reaffirm their traditions.⁴

Also, words in the language have been utilized in various codes that were being drafted at the time, as interpreted by the Culture Department. The Elders also requested cultural sensitivity training for

⁴ See Tribal Elder Abuse Task Force, "Using Your Tribal Values to develop an Elder Protection Code," Second Edition, August 2008.

employees working within the Tribe. The process of incorporating tradition and culture is a work in progress that we all strive for and will continue well into the future, for the next seven generations.

With this history in mind, on November 27, 2013, the first NHBP phone conference was held and the “VAWA Enactment Team” was established. The VAWA Enactment Team consisted of the Staff Attorney, Chief Judge, and Chief of Police; they were the initial delegates from NHBP as provided for in the preliminary letter of interest to the DOJ. The Prosecutor and the Police Sergeant were later added to the Team. This group worked through the main legal requirements of the law and assessed the specific statutory requirements and initial required steps in implementing VAWA’s special domestic violence criminal jurisdiction. The VAWA Enactment Team continued to meet to discuss the legal requirements of the Code until the first meeting of the working group was held. The VAWA Enactment Team was involved in the first initial meetings of the working group until the Code was in final draft form, at which time the Enactment Team was dissolved and the working group remained to conduct the Code review.

As mentioned, as a natural flow from this team, the “NHBP Working Group” was established. This group consisted of the Tribe’s employees and professionals with the work related responsibility of carrying out the minute details of the law by providing services and assistance to victims and other persons as required in the law. The first meeting of the Working Group was held on January 24, 2014. These meetings were scheduled to include the various departments and to conduct outreach and collaboration within the departments. The meetings included representatives from the Housing Department; Behavioral Health; Tribal Court; Membership Services; Health & Human Services; Police Department; and the Prosecutor’s Office. Later, after a victim’s advocate was hired, the Domestic Violence Victim Advocates was also included. As mentioned previously, Tribal Member employees from the various departments were invited and encouraged to attend.

During this busy time, the NHBP also prepared and submitted written comments regarding the Violence Against Women Government-to-Government Tribal Consultations taking place annually as provided through the VAWA federal legislation and the Department of Justice. NHBP submitted its written comments in 2014 and 2015, and anticipates submitting in 2016.

NHBP was also involved in the State of Michigan’s STOP Grant funding meetings. The Michigan Domestic and Sexual Violence Prevention and Treatment Board (MDSVPTB) administers the federal STOP grant funding to the domestic violence service providers throughout the state as mandated in VAWA 2013. The MDSVPTB invited the Michigan Tribes to attend the meetings; the first being held on May 28, 2014. NHBP attended and voiced our concerns and submitted written comments. While the Tribes were invited to the meeting it was made clear by the MDSVPTB that funding remained stagnant and the amount set aside for culturally specific programs was \$122,000 for the twelve Tribes in Michigan.

For NHBP to accomplish the two goals of submitting written comments for the Government-to-Government Tribal Consultation and attending and participating in the MDSVPTB meetings, the “DV Task Force” was created and once these two objectives were completed, the task force was dissolved. The other domestic violence related activity was the coordination of a meeting of the Michigan Tribes

regarding domestic violence awareness and understanding of domestic violence within Indian Country. This was also a major undertaking for the Tribe and was overwhelmingly supported by the Tribal Council and the Tribal membership. This meeting titled, "Building a Tribal Consortium on Domestic Violence" was held on March 5, 2015. This meeting was well attended and well received by the Michigan Tribes that attended. NHBP is working on a follow-up meeting to this initial gathering. NHBP was involved in many aspects of domestic violence awareness and was learning as much as possible, providing information to the community, and including the surrounding community in the process as well.

Once the Tribe completed several of its domestic violence initiatives, the work on the code drafting continued. As the DV Code was nearing completion the "DV Code Review Team" was established to begin the process of code review with the various departments of the Tribe and the professionals and service providers that made up the Team. The first draft of the DV Code was distributed to the Code Review Team on April 28, 2015. The code review team continued to meet continuously until February 2016, just under one year. In March 2016 community meetings are scheduled to present the final draft of the DV Code and workshops with Tribal Council to present the Code for approval.

A questions and answers section was provided in the presentation to the Community in March 2016, and while various comments were received there were no immediate questions. But upon talking with the community members individually, questions were asked regarding the process for the Code. Brief answers were provided to their questions at the meeting and we requested that their questions be put in writing and in this way responses to questions could be provided to all Tribal members through the newsletter.

The DV Code was eventually approved by Resolution of the Tribal Council on March 17, 2016, with an effective date of June 1, 2016. The effective date was requested by the various employees and professionals within the Tribe so that the processes and procedures required within the Code could be implemented. There was concern that the services and various requirements of the Code were not ready to be executed. With this work that needed to be complete before the Code became effective, the "DV Code Prep Team" was established to work through the processes required from each department.

Many topics were discussed within the DV Code Prep Team including: safety planning for victims; crisis shelters; no contact orders; BIPS for men and women; transportation; traditional healers; substance abuse; victim services; LGBTQ community; Peacemakers; and children's services. Also, forms for the various departments were reviewed and discussed.

On April 21, 2016, the first of four technical amendments were made to the Code. The amendments requested were to the definition of "aggravated domestic violence." The addition of a traumatic brain injury was added to the definition and the section referencing prior convictions was deleted because a specific section of the Code already provided for additional convictions in the sentencing designation section for habitual offenders. The section referencing exclusions for crimes of domestic violence was also added. And references to children "in the household" was deleted in two sections under the Duty to Preserve Evidence if a child was present during the incident.

NHBP also hired a contractual attorney to assist with the policy and procedures required of the Code. Legal met with the attorney as well as the DV Code Prep Team. The various topics discussed were the MOAs; training required for various departments; contracts; forms; domestic violence leave act; and technical amendments to the Code. Action items were assigned to various individuals who were responsible for its implementation, and to report back to the group.

On May 2, 2016, the Tribal Court publishes the proposed court rules for domestic violence proceedings. And on May 10, 2016, the NHBP amends the Prisoner Housing Contract with the County to reflect the new law and the Tribes' assertion of SDVCJ.

The DV Code Prep Team met on May 16, 2016, for the final time before the DV Code became effective. Updates were provided from the persons responsible for their action items. Among the updates were the Employee DV Leave Act; Duty to Warn Policy; PPO training; Youth Membership Services training; MOA's with local Children's Advocacy Center; BIPS; Victim's Rights and Victims' Rights Card; and technical amendments requested of the Code.

On May 19, 2016, technical amendments are presented to Tribal Council for approval. The updates requested are to the section referencing Reporting Domestic and Family Violence – Mandatory Reports. The reference to “mandatory reports” was deleted and was changed to “duty to warn.”

In the June 2016 Tribal Newsletter, titled, *The Turtle Press*, the questions and answers from the Community meetings were published for all to review.

On June 16, 2016, in the Tribal Council Meeting, once again approval of technical amendments to the Code are presented. In this request, the Domestic Violence Leave Act sections are amended, it was determined that clarifying amendments were needed to ensure that the limitations periods and scope of the limited waiver of sovereign immunity from private suits for monetary damages would be interpreted consistent with those set forth in the Fair Employment Practices Code. In this meeting the Tribal Council also approves the Employee DV Leave Policy. The NHBP Fair Employment Practices Code and the DV Code both provide employees who are impacted by domestic violence the right to paid and/or unpaid leave from work when such leave is required to attend court proceedings and for other purposes related to the impacts of domestic violence. In order to implement the rights granted to employees under these Tribal laws the Legal Department, in consultation with Human Resources, prepared a Domestic Violence Leave Policy for approval by Council.

On July 25, 2016, at the NHBP All Staff Meeting brochures were provided to the employees on the DV Leave Policy.

And on August 18, 2016, a final technical amendment was made to the Code. This amendment pertained to the filing fees required in the Harassment Protection Order section. In that section, it required a filing fee for those persons requesting an order. At the request of the DV Victim's Advocate, the reference to the filing fees was deleted. It was a concern that any filing fees for protection orders

could be detrimental to victims and reduce the possibility that they would come forward to request a protection order because of lack of resources. With this amendment there are no filing fees for any of the protection orders in the Domestic Violence Code, thereby decreasing additional stress on victims and increasing the chances that they will come forward to request protection if they need it.

DEVELOPING SERVICES FOR SURVIVORS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT & STALKING

Before sharing the process for developing services for survivors of domestic violence, we want to discuss the challenges with terminology for individuals who have experienced domestic violence, sexual assault and stalking. There are many views regarding the appropriate terminology for identifying an individual who has experienced or is currently experiencing domestic violence. Most federal laws and many federal programs use the term “victim”. The use of this term reflects decades of advocating for domestic violence to be treated as a crime and those victimized by domestic violence to have access to resources in the same manner as victims of other crimes. In contrast, many agencies that provide services to individuals who have experienced or are currently experiencing domestic violence use the term “survivor”. There are numerous reasons for the use of the term “survivor”, ranging from the recognition of the strength of the individual in enduring domestic violence to serving as a term of hope that healing is possible. Of additional consideration in determining terminology is the goal of empowering individuals who have experienced or are currently experiencing domestic violence. With domestic violence being rooted in the dynamics of power and control, including the taking of decision-making power, one reason for using these terms interchangeably is to empower the individual to decide how to identify. NHBP, therefore, uses the terms “victim” and “survivor” interchangeably in the NHBP Domestic Violence Code, as well as this Manual, to reference federal law when appropriate, ensure access to federal resources, and, most importantly, empower individuals in choosing the term with which they identify. An almost identical passage is in the NHBP Domestic Violence Code.

Through the VAWA Enactment Team and the VAWA Working Group, Tribal Government Staff gathered to discuss the need for services for victims of domestic violence. The first important realization from these conversations was that Tribal Citizens and members of the community were already seeking services, but not directly. Specifically, the Health and Human Services Staff advised that, while domestic violence was rarely identified as an issue in the initial stages of seeking services, a significant number of Tribal Citizens and community members had been victimized by domestic or sexual violence. Further, the Probation Officer was also finding that defendants and individuals related to cases in the NHBP Tribal Court also had experienced domestic violence, sexual violence or other forms of violence during their lifetime. NHBP Staff were providing services where possible and/or connecting Tribal Citizens and community members to outside service providers, but on a case-by-case basis. Further, although these individual needs were being met, none of the Tribal Government Staff had the capacity to provide full-scale services or commit the time to build and maintain partnerships in the multiple service counties of the Tribe. As a result, we agreed that a centralized person to coordinate victim services was a critical need.

This need was then communicated to Dan Green, the Chief Planning Officer, who convened the VAWA Enactment Team, VAWA Working Group and other key Tribal Government Staff to specifically discuss applying for an Office on Violence Against Women (OVW) Grant and, later, a National Congress of American Indians (NCAI) Grant. Mr. Green, with the assistance of Attorney Cook and Judge Pope, utilized discussions to develop the priorities of these grants. Through the NCAI Grant Application, NHBP requested funding to finalize the internal processes for adopting a domestic violence code that exercises

jurisdiction pursuant to VAWA 2013 while developing resources to assist other Native Nations in doing the same. The NCAI Grant Application was approved, with this Manual being one important result of this critical grant.

A primary component of the OVW Grant Application was the funding of a Domestic Violence Victim Advocate (DVVA) position. This position would be responsible for: developing the infrastructure for victim services; developing all organizing documents, including policies, procedures, and forms; providing direct services to victims of domestic violence, teen dating violence, sexual assault and stalking; build partnerships with victim service agencies in all of the NHBP service counties and offer or coordinate cultural training for these partner agencies; and develop educational programming on domestic violence, teen dating violence, sexual assault, and stalking.

A key decision for the OVW Grant Application was determining where to house the position of DVVA. The VAWA Enactment Team engaged in significant discussions in deciding to place the DVVA position in the NHBP Tribal Court. This discussion involved three primary considerations: the desire to provide proper support to the DVVA; the necessity of creating accountable oversight of the services offered; and the practical reality of physical limitations. While we are aware that many service providers that exist within a Tribal Government structure advocate for an independent position or program, we had considerable concerns about providing the support victim advocates need by virtue of the position.

As a former Staff Attorney for a county-wide victim service agency and former Director of Victim Services for an LGBT agency, Judge Pope was well educated on the trauma service providers experience as a result of witnessing violence on a day-to-day basis, with this type of trauma known as vicarious or secondary trauma. When taking the very serious issue of vicarious trauma into consideration, the VAWA Enactment Team agreed that it was critical to provide a supervisor who had experience as a victim advocate, both for the wellbeing of the DVVA and the potential impact on the quality of the services provided.

The VAWA Enactment Team also agreed, based on their collective and individual experience, that a supervisor was critical in order to provide accountable oversight of the services developed. While individual Tribal Government Staff had been providing support to victims as an indirect result of his or her primary responsibilities, the DVVA would be the first concerted effort by NHBP to provide direct services to victims of domestic and sexual violence. Although the sole person responsible for violence is the perpetrator, the goal of a victim service provider is to work with victims to help them protect their safety to the best of everyone's ability in the circumstances. Tragedies will occur, regardless of a victim advocate and victim doing everything "right". A supervisor provides an additional review of the services being offered to ensure the consistency of quality services. In addition, a supervisor can serve as a sounding board for brainstorming avenues to address specific issues within a case.

The Tribal Court Administrator (TCA) and Chief Judge met the goals in providing supervision, in particular with their collective and extensive experience in the field of domestic violence with that experience spanning multiple capacities. The TCA and Chief Judge both had served as victim advocates with the Chief Judge also serving as a Staff Attorney for a county-wide victim services agency in Michigan. The

Chief Judge, also has extensive experience in systems development of a victim services program. In addition, both the TCA and Chief Judge have experience in managing grants, including domestic violence-specific grants. With the DVVA providing services regardless of whether a case is filed in the NHBP Tribal Court, the TCA is providing direct supervision on any client-related matters and both the TCA and Chief Judge are working with the DVVA to develop the systems required to safely provide direct services in a manner reflective of the Seven Grandfather Teachings. In addition, the OVW Grant provides funding for educational programming on domestic violence, sexual assault and stalking. The Chief Judge, TCA and DVVA are working in collaboration on this education campaign, as well as reaching out to key Staff throughout the Tribal Government.

The second consideration in placing the DVVA in the NHBP Tribal Court was rooted in the physical limitations of available space. The NHBP Justice Center, which houses the Police Department, Prosecutor and the Tribal Court, was completing renovations at the time these discussions took place. The Police Department and Tribal Prosecutor determined they could not provide office space for the DVVA. While the VAWA Enactment Team considered the Tribal Prosecutor, this was problematic for her as the Prosecutor and DVVA would have to share an office, raising issues with the confidentiality of files in the Prosecutor's responsibility, including as the Indian Child Welfare Act Attorney, as well as meeting responsibilities when the Prosecutor was on-site. With the TCA being the best choice for providing support to the DVVA and oversight of the services with the Chief Judge lending her expertise as needed, it was determined that the NHBP Tribal Court was the best location for the DVVA office. As the Chief Judge works both on and off site, she determined it was not the best use of resources to reserve an office for her. Following discussions with the Chief Planning Officer where he confirmed that he could adjust the final renovations to the Justice Center to provide the capabilities, primarily technological, for the Chief Judge to use the conference room as an office space when at the Justice Center, Judge Pope released her office, having it reassigned as the office for the DVVA.

With the supervision of and office space for the DVVA resolved, the Chief Planning Officer was able to finalize and submit the OVW Grant Application. NHBP received the three-year OVW Grant.

It is important to note that the NHBP Tribal Court did not rely solely on being awarded the OVW Grant in preparing for implementation of the victim services. The VAWA Enactment Team and VAWA Working Group had determined that the DVVA position was absolutely critical to implementing the NHBP Domestic Violence Code in a manner that affirmed the sovereignty of the Tribe, implemented the return of criminal jurisdiction pursuant to VAWA 2013 and honored the values and traditions of the Tribe by offering services to survivors of domestic violence, sexual assault and stalking. The Annual Budget Process at NHBP began before notification of the OVW Grant. In trying to ensure the ability to hire a DVVA, the NHBP Tribal Court included the DVVA position in its proposed budget, requesting allocations to fund the positions, if the OVW Grant Application was denied. The NHBP Tribal Court ended up drafting three 2016 Proposed Budgets. The first, submitted days within the list of OVW Grants awarded, included all costs relating to the DVVA and victim services. The second was based on knowing that the OVW Grant had been awarded, but not knowing the actual allocations for each category as the public notice provided the amount which was slightly lower than the total amount requested. The third and

final NHBP Tribal Court 2016 Proposed Budget included specific requests with the actual allocations awarded by OVW included as we had received the full notification from OVW.

After receiving notice of the OVW Grant and while engaging in the Annual Budget Process, the Tribal Court engaged in the process of drafting the DVVA job description, working with the NHBP Human Resources Department (HR) to conduct a wage study, and having both approved by Tribal Council. The Court then worked in cooperation with HR to post the position, interview candidates and select a final candidate. The Court prioritized this process, completing the hiring process with the successful candidate beginning work on January 25, 2016.

It was extremely helpful to have the DVVA on staff prior to the adoption of the NHBP Domestic Violence Code, in part to begin the research and other preparatory tasks required for and enactment of the law.

While other Tribes may not engage in the same processes as NHBP, we share this detailed history to highlight the multiple layers for identifying victim service needs, securing funding and staffing to meet those needs and preparing for implementation of a domestic violence code that exercises jurisdiction pursuant to VAWA 2013.

RECOMMENDATIONS FOR VICTIM SERVICES

1. Gather Tribal Government Staff to Discuss Victim Services. The gathering of Staff from throughout the Tribal Government to discuss victim services provides a comprehensive and shared understanding of the victim services needs of your Tribe.
2. Identify Victim Services Currently Being Provided. This is an easier endeavor if you have a specific department or program that offers services to victims of domestic violence. However, you may find that services are being provided indirectly through departments or by specific staff. A good avenue for this assessment is to gather Staff from throughout the Tribal Government.
3. Identify Needs Specific to Your Tribe. There are many avenues for accomplishing this goal. While discussions with Tribal Government Staff are important, Staff may not have the knowledge needed to engage in this discussion. As such, it may be necessary to also conduct research, attend trainings, etc. Conducting a needs assessment may also be helpful, although reaching out to victim service agencies would be helpful to ensure that the needs assessment is designed in a way to support survivors.
4. Identify Critical Services. This process not only involves designing a program that meets the needs of your Nation, but also services required by your domestic violence code and VAWA 2013.
5. Assess Capacity. The discussion about capacity involves both the financial resources available to offer survivor services, as well as the staff to coordinate these services. Native Nations are resilient and generally find a way to meet needs, regardless of having the funding or staff needed. Without a survivor-specific program, however, services can become dependent upon a specific individual, risking the services disappearing when that individual leaves employment. As such, we recommend that Native Nations consider developing systems that can be permanently supported versus assigning duties to a Staff person because they have experience in or a passion for victim services.
6. Determine Services in the Interim: While there is funding available to Native Nations to address domestic violence, grants are not a guaranteed avenue for funding. In addition, funding through Tribal allocations is not always possible. Native Nations must create a plan that can be sustained in the event that specific funding is not obtained. This may involve developing partnerships to provide referrals instead of direct services. Even with this approach, however, Tribes must determine the Staff responsible for building and sustaining these partnerships, as well as offering training to assist outside agencies with providing culturally-competent services to your Tribal Citizens. Even for interim services, we recommend building systems into the Tribal Government structure versus relying upon a particular individual to fill the need.
7. Develop Strategies for Securing Resources. For many Native Nations this will involve multiple strategies including requesting funding through the Tribal Government, as well as seeking and

applying for grants. The latter process can be very long and never guaranteed. As such, gathering key Tribal Government Staff to discuss resources that are currently available, as well as creative approaches to fundraising can open doors to funding not initially considered.

8. Develop Policies and Procedures for Victim Services. Whether you have secured the resources to launch a full victim services program or are offering limited services through current programs, develop policies for providing services. These policies should not only establish the specifics of program and staffing requirements, but the manner in which these services shall be provided. In addition, develop clear procedures for services so that a survivor will have realistic expectations for what can be provided, as well as what steps they need to take to request assistance. Be sure to remember to build form development into your planning. Taking the time to consider what your victim services program needs to know about the individual seeking services is a critical component often overlooked because of the constant urgency of victim services. These forms are critical, however, to capture the information the provider needs to assist and protect the survivor, ensure compliance with applicable laws, and protect the service provider and Tribe.
9. Build Training and Support for Victim Services Staff into the System. Working with survivors can be very difficult. Service providers experience trauma, referred to as vicarious or secondary trauma, through the day-to-day experience of witnessing violence, whether that violence be physical, verbal, emotional, financial, or spiritual. Mechanisms to support victim service providers is critical for the wellbeing of that staff person, as well as the overall program.
10. Develop A Mechanism for Assessment. Developing assessment tools is not easy, especially when the priority always is assisting an individual in crisis due to domestic violence. However, assessment tools not only provide the opportunity to measure the effectiveness of the services provided and identify unmet needs not originally considered, but also provide measurable data for grant applications, including grants not originally considered or which from which funding as not originally received because the data was not available.

DRAFTING THE NHBP TRIBAL COURT RULES FOR DOMESTIC VIOLENCE PROCEEDINGS

The NHBP Tribal Court takes great care in drafting court rules as they inform Tribal Citizens and the general public of the processes for actions in the Court under the various codes of the Tribe including, but not limited to:

1. Information that must be provided in documents filed with the court, such as complaints, motions, reports and orders;
2. The different types of proceedings that can occur within a case, such as arraignments, evidentiary hearings, pre-trial hearings, discovery, trials, pre-sentence investigations, and sentencing hearings;
3. Timelines for the various types of proceedings within a case, such as how many hours after arrest that a person must be arraigned, the number of days by which a trial must begin or be dismissed, and the number of days by which a hearing on a Personal Protection Order must be heard or dismissed;
4. The individuals who are required to be at court proceedings;
5. The individuals who may be present at Court proceedings;
6. Protections for victims, such as secure waiting areas; and
7. Consequences for violating court orders, failing to provide information as required in the court rules, failing to appear at court proceedings, and other actions for which the court may sanction a party, attorney or witness.

While important for any code, Tribal Court Rules are critical for proceedings involving the exercise of jurisdiction pursuant to VAWA 2013. With opponents to VAWA 2013 claiming that non-Tribal Citizens do not have notice of Tribal laws and Tribal Court processes, Tribal Court Rules for domestic violence proceeding must ensure that Tribal Citizens and the general public have notice of the particulars for domestic violence proceedings in the NHBP Tribal Court.

Chapter 1 of the NHBP Tribal Court Rules, Court Rules for the Adoption of Court Rules, provides the process by which our court rules are adopted. This process reflects the overall goal of transparency in the Tribal Court through the publication of proposed court rules, including amendments, for 30 days during which any person may submit comments on the proposed court rule or amendment for consideration by the Chief Judge.

The NHBP Tribal Court has prioritized adopting court rules that provide meaningful access to the Tribal Justice System for Tribal Citizens and the community-at-large, as well as attorneys. To achieve this result, the NHBP Tribal Court devotes considerable time in the drafting of court rules prior to publication, comment and adoption. This detail-oriented process is very time-intensive and involves multiple layers of review.

To begin, the Chief Judge or the Chief Judge's designee compiles the first draft of the court rules, using plain language so that they can be understood by both attorneys and pro se parties. The latter is of particular importance as individuals with matters before the NHBP Tribal Court are often not

represented by legal counsel and do not have the background to navigate the legal language frequently used in state court rules. The process of drafting court rules in plain English appears to be simplistic, but it is not. The Chief Justice not only repeatedly reviews and edits court rules, but requests review by others, including non-attorneys.

In addition, the NHBP Tribal Court attempts to draft court rules in a comprehensive manner to assist pro se parties in understanding difficult legal processes; processes that if not followed, can result in anything from losing a motion to losing the entire case. This approach differs from that of state courts where processes are frequently described once, and then numerical citations are provided whenever that process is again employed. This state court format requires the reader to refer back-and-forth between multiple provisions to understand all of the requirements for the action they are trying to take. This process can be difficult for attorneys, but for pro se litigants, it can be so confusing that they accidentally fail to meet all of the key requirements and receive an unfavorable ruling. In other instances, court rules can be so overwhelming to pro se parties that they abandon the request they were trying to make or, in extreme circumstances, abandon the case altogether. The NHBP Tribal Court attempts to reduce the occurrence of these unfortunate situations by presenting a comprehensive compilation of all of the requirements within the provision.

It should be noted that a key requirement in VAWA 2013 is easy access to Tribal Court Rules by the general public. The NHBP Tribal Court has met this requirement by publishing the Court Rules on the Tribal Court webpage of the NHBP website; a website accessible to the general public. In addition, the NHBP Tribal Court Rules are available for review at the Court offices.

The drafting of any chapter of NHBP Tribal Court Rules is an important endeavor. However, the NHBP Tribal Court had significant challenges in drafting the NHBP Tribal Court Rules for Domestic Violence Proceedings with the greatest challenge being the time limitations.

Because of the multiple layers required when drafting court rules, it takes several months to complete the final draft submitted to the public for review and comment. With NHBP having participated in the ITWG, a considerable amount of time had been devoted to both the overall process for drafting of the NHBP Domestic Violence Code and the overall process for preparing for enactment. The NHBP Tribal Court was involved with these processes with Tribal Court Staff sitting on the VAWA Working Group, which included review of the draft Domestic Violence Code, as well as the Chief Judge serving as a delegate to the ITWG, on the VAWA Enactment Team and on the VAWA Working Group until review of the Code began. Further, the OVW Grant had been successfully submitted with the NHBP Tribal Court working diligently to complete the internal position process for approval of the DVVA position by the NHBP Tribal Council and complete the hiring process in collaboration with the NHBP HR Department in order to have the DVVA begin employment as soon as possible, which was January 2016. These actions contributed to the expectation that the NHBP Tribal Court could quickly finalize the draft Court Rules for Domestic Violence Proceedings.

This expectation was problematic. The first is that court rules cannot be drafted until there is a properly enacted law. Until the law is actually adopted by the legislative body, it can be changed, including up to

moments before the vote. The concern of last minute amendments, some that change critical provisions of the law being considered, is a frequent issue within the United States legislative process. While NHBP takes great care in the drafting process of proposed legislation, the NHBP Tribal Council has the authority to make changes to the law prior to adoption. Further, as described in the “Developing a Domestic Violence Code” section of this Manual, Attorney Cook engaged key Tribal Government Staff in a collaborative, time-intensive, detailed-oriented, provision-by-provision review of the draft Domestic Violence Code. This process not only took several months to complete, but resulted in numerous changes to the draft Code, confirming that the requirement of waiting for an adopted NHBP Domestic Violence Code before beginning the court rule drafting process was the best approach.

Coupled with this problematic expectation was the desire, in particular with regard to the VAWA Working Group, to have full enactment within the NHBP Tribal Court upon adoption. To address this well-intentioned and understandable goal, the NHBP Domestic Violence Code, adopted on March 17, 2016, would not be enacted until June 1, 2016. Unfortunately, this was not enough time, in part due to the publication requirements in the Court Rules for the Adoption of Court Rules. Chapter 1 not only required that proposed court rules be published for 30 days, but specifically required that they be published in NHBP’s monthly newsletter, The Turtle Press. This requirement reduced even further the time the NHBP Tribal Court had to draft the Court Rules for Domestic Violence Proceedings, as well as draft amendments to provisions in other Court Rules as the NHBP Domestic Violence Code amended other substantive laws, such as the Court Rules for Jury Procedure. As time is also required for the Turtle Press to be submitted, printed and mailed, the NHBP Tribal Court had insufficient time to meet the goals of the drafting process.

In mentioning the latter issue of printing, the NHBP Tribal Court is incredibly grateful to the Communications Department, and in particular Communications Director Judi Henckel, for the efforts made to give the NHBP Tribal Court as much time as possible to draft the Court Rules for Domestic Violence Proceedings. Director Henckel went above-and-beyond in discussing avenues for formatting that enabled insertion into the Turtle Press in a manner that the printing process could accommodate and meet the requirements of the Court Rules, while giving additional time for drafting.

Even with the Communications Department creating an avenue to give significantly more time for submission of the proposed Court Rules for Domestic Violence Proceedings and other proposed amendments, the deadline for submission to the Turtle Press, the required posting period of 30-days and the enactment date of the NHBP Domestic Violence Code resulted in the NHBP Tribal Court having only one month to draft the Court Rules for Domestic Violence Proceedings to enact a 50-page law.

The NHBP Tribal Court has since amended Chapter 1 to provide publication of the notice only, instead of the entire court rule, an amendment that, in hindsight, may have been helpful for drafting the Court Rules for Domestic Violence Proceedings. This amendment, while providing approximately two weeks of additional time to draft a chapter of court rules, still would not have provided the time needed to fully engage in the procedures established by the NHBP Tribal Court. The NHBP Tribal Court will be revising the Court Rules for Domestic Violence Proceedings over the coming months to better reflect the goals discussed in this section, as well as incorporate amendments adopted by the NHBP Tribal Council.

RECOMMENDATIONS FOR DRAFTING COURT RULES

1. Start Early. Review your procedures for adopting court rules when the Tribe first begins to discuss adoption of a domestic violence code that exercises criminal jurisdiction pursuant to VAWA 2013 to determine if there are any barriers for adopting court rules, in particular if there is an expressed desire to adopt court rules close to the date of enactment. If you have to publish your draft court rules, it is critical to find out deadlines for publication in advance and work these deadlines into your plan.
2. Educate. Court rules cannot be drafted until you have an adopted code. This can be a difficult concept for people outside of the court to understand, especially if you have spent a considerable amount of time drafting a domestic violence code and preparing for enactment of that code. Educate those throughout the Tribal Government about the multiple tasks that comprise this time-intensive, detail-oriented process to establish mutual expectations and deadlines that can reasonably be met.
3. Read the Code Once for a Comprehensive Understanding. Resist the temptation to immediately begin making notations for the drafting of court rules. It is easy to become focused on minute details, missing the overall purpose of a provision, and then easy to become focused on individual provisions, missing the full context of the code. You will need to repeatedly read the code to draft, review and edit your court rules. Take the time to read the code once in its entirety to gain a comprehensive understanding of the law.
4. Read the Code a Second Time to Mark Provisions Relating to Court Rules. During the second read of the domestic violence code, use one color to flag the general provisions that relate to the pending court rules. This notation can be in the form of post-it notes, highlighters, etc.
5. Read the Code a Third Time to Mark Important Provisions Relating to Court Rules. During the third read of the domestic violence code, use a different color to note the provisions that are especially important to the exercise of criminal jurisdiction, but similar to previously adopted court rules to the extent that drafting these provisions will, at least, be a familiar exercise.
6. Read the Code a Fourth Time to Mark Critical or Unique Provisions Relating to Court Rules. During the fourth read of the domestic violence code, use a third color to note the provisions that are critical to the exercise of criminal jurisdiction, such as a requirement in VAWA 2013, or unique to the domestic violence code, meaning you will have to give special consideration to developing the process as there are no similar provisions in the other laws of the Tribe or court rules of the court. Such unique provisions may require additional research – and time - to draft.
7. Stock Your Supplies. Color coding is an effective tool to ensure that you have included all of the provisions in your court rules that are required in the domestic violence code. By deciding the method in advance, you can purchase a sufficient number of supplies to implement your review

of the domestic violence code whether that format involve multiple colors of post-it notes, highlighters, pens – or whatever medium you prefer. Whatever you think you will use, increase the purchase by a small amount so you have the supplies needed to note and track provisions in the code, including if more than one person is engaging in the repetitious review discussed above. If funding is an issue, beginning early will allow you to spread the cost over a period of time, request funding or even secure the supplies through fundraising efforts.

- a. For example, at the NHBP Tribal Court, a printed copy of the law was placed in a three ring binder and then marked as follows: using green post-it notes to mark all of the provisions that needed to be incorporated into the court rules; yellow post-it notes for provisions that would require careful consideration to draft the accompanying court rule; and red post-it notes to mark provisions in the code that were critical, in particular in relation to VAWA 2013 requirements, or unique provisions not previously developed through the court rules.
8. Use Plain English. More and more jurisdictions are using plain English in their court rules. While court rules that relate to criminal matters often involve prosecuting attorneys representing Tribes and defense attorneys representing defendants, the parties in civil actions – including personal protection matters – frequently do not have legal representation.
 9. Have a Law-Trained Individual Edit the Court Rules. Drafting court rules is a complicated process. It requires the drafter to not only write the provisions required by the applicable law, but also keep in mind the particulars of other laws and court rules. In addition, the drafter must take care to ensure that protections guaranteed by your Tribe’s constitution are properly incorporated into the court rule. Having a law-trained individual review the court rules provides an additional review of all of these key factors prior to publication or adoption.
 10. Have a Person Who is Not Law-Trained Edit the Court Rules. This is a great way to ensure you have successfully used plain English throughout your court rules. A person who is not an attorney or law-trained has the natural ability to identify words or concepts that need to be edited so that individuals representing themselves will understand what they are required to do.
 11. Consider Providing the Opportunity for Comments. While the final adoption of court rules, including whether to incorporate a comment submitted, should remain within the authority of the court, public comments sometimes highlight problematic language in the court rules. This can include something as simple as a typographical error to discovering that you need to add a definition. At minimum, it is an additional layer of review to ensure accuracy before adoption.

NHBP TRIBAL COURT FORMS & OTHER IMPLEMENTING DOCUMENTS

After completing the Court Rules for Domestic Violence Proceedings, the NHBP Tribal Court turned to the court forms and other implementing documents required to implement the NHBP Domestic Violence Code. This process also had the June 1, 2016 enactment deadline. In addition, the NCAI Grant allocated funding to assist with the development of court forms with all expenditures required prior to June 30, 2016. The NHBP Tribal Court, therefore, had approximately one month to complete all of the court forms to be developed under the NCAI Grant and/or required by the NHBP Domestic Violence Code after submitting the Court Rules for Domestic Violence Proceedings to the Turtle Press for publication. Once again, the tight deadline was challenging.

It should be noted that the deadlines relating to tasks assigned to the NHBP Tribal Court under the NCAI Grant were impacted by the review process described in the “Developing a Domestic Violence Code” section of this Manual. The initial draft of the NHBP Domestic Violence Code took a considerable amount of time to draft, in part to benefit from the guidance of the initial Native Nations that exercised jurisdiction early under this pilot project provided through their sharing of updates, successes and challenges at ITWG in-person meetings, webinars and materials. In addition, the review by the VAWA Working Group dramatically exceeded the original estimate of two months for review. As such, the adoption date was pushed back by over six months, thereby reducing the amount of time for the NHBP Tribal Court to complete its pieces and still make the NCAI Grant deadline of June 30, 2016, a date already graciously extended by NCAI due to the adoption date for the Code being pushed back for review by the VAWA Working Group.

It should also be noted that, like the court rules, these court forms and other organizing documents required a final code to be adopted by the NHBP Tribal Council before work could begin. Numerous provisions in the NHBP Domestic Violence Code require that specific information be presented to the court or that the parties be advised of specific information or processes. As such, these documents also had to wait for the proposed Court Rules for Domestic Violence Proceedings to be completed so that the forms and organizing documents accurately reflected the actual processes. This was especially critical in relation to provisions enacting VAWA 2013 jurisdiction.

Although the actual drafting could not begin until the NHBP Domestic Violence Code was adopted and the proposed Court Rules for Domestic Violence Proceedings submitted for publication, the NHBP Tribal Court engaged in considerable research while the draft code was being reviewed by the VAWA Working Group. This research included the invaluable information shared through the ITWG. However, it also included Michigan court processes.

Michigan adopted Michigan Court Rule 2.615(A) provides that, “The judgments decrees, orders, warrants, subpoenas, records, and other judicial acts of a tribal court of a federally recognized Indian tribe are recognized, and have the same effect and are subject to the same procedures, defenses, and proceedings as judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts of any court of record in this state, subject to the provisions of this rule.” MCR 2.615(B) conditions this recognition on the Tribal Court providing this same recognition via Tribal Court Rule and transmitting

that Tribal Court Rule to the State Court Administrative Office. In addition, MCR 2.615(C) provides specific grounds for objecting to recognition of a Tribal Court Order by a Michigan Court.

Despite this Michigan Court Rule, there are some Michigan Courts and Law Enforcement Agencies that resist enforcement of Tribal Court Orders. In some instances, this is due to a lack of understanding of the Judge or Agency; in other instances, it is purposeful. The Tribal State Federal Judicial Forum is comprised of, in part, the Chief Judge or his or her designee of all of the federally-recognized Tribes within the borders of the State of Michigan and an equal number of State Court Judges appointed by the Michigan Supreme Court. This Judicial Forum is working diligently to educate State Court Judges about Tribal Courts and break down the barriers to enforcement of Tribal Court Orders and compliance with laws impacting Indian Country, such as the Indian Child Welfare Act and the Michigan Indian Family Preservation Act. Although making significant progress, the NHBP Tribal Court strived to protect victims of domestic abuse, sexual assault and stalking by mirroring the State of Michigan formats in the hope that this similar formatting will bolster enforcement.

Once all of the information required was available, the NHBP Tribal Court worked to draft the text for the various forms required with careful consideration given to the petitions, orders and other court forms relating to the multiple types of personal protection orders available under the NHBP Domestic Violence Code. Through the NCAI Grant, the NHBP Tribal Court had the resources available to hire an independent contractor to format these text-heavy forms, including with the goal of designing the personal protection orders to mirror the State of Michigan court orders.

It may seem like a simplistic consideration, but determining the use of each document was critical in the drafting of the text, not only for the overall document, but various portions within the document. Further, from the onset, we had to determine what portions, if any, would be processed through JustWare, the electronic case management system the NHBP Tribal Court utilizes. For example, an NHBP Tribal Court issued personal protection order contains: the header, including the Tribal Court Case Number, petitioner information and respondent information; notice that the personal protection order was granted for the petitioner against the respondent; check boxes with the specific behavior that is prohibited; the addresses for locations where the respondent is not allowed to enter; notice of the VAWA 2013-required hearing if temporary, including the date, time and assigned judge; and the signature information. This format requires the entry of standard information through JustWare and then an intermixing of sections that the judge will complete by hand (e.g., the behavior prohibited), as well as information entered by JustWare (e.g., the date, time and presiding judge for the hearing of a temporary order). As such, the Chief Judge had to coordinate the drafting of all of our court forms with the Court Administrative Staff, DVVA and independent contractor with all of the above taking the formatting of Michigan court forms into consideration.

The process for the development of court forms is both detailed-oriented and time-intensive. While every Tribal Court will have to evaluate the individual considerations for their form development, the forms we developed, with hardcopies attached to this Manual, will be available electronically through this NCAI Grant to other Native Nations to download and edit for use within their Tribal Court.

MIGWÉCH (THANK YOU)

The National Congress of American Indians provided invaluable assistance to the Nottawaseppi Huron Band in implementing the NHBP Domestic Violence Code. Through this NCAI Grant, NHBP had the resources necessary to not only draft the Domestic Violence Code, but develop the systems, documents and programs in the Tribal Government to assist survivors of domestic violence, sexual assault and stalking. Further, many of the resources, tools and templates developed will assist NHBP on a long-term basis. Finally, this NCAI Grant provides support to Native Nations throughout Indian Country by providing access to the resources, tools and templates developed by NHBP to minimize the resources of these Native Nations in protecting their Tribal Citizens and members of their community.

We would also like to thank John Dossett, General Counsel, at the National Congress of American Indians for his work on VAWA 2013. His dedication and advocacy has greatly contributed to the return of criminal jurisdiction in domestic violence matters back to Native Nations, protecting both Tribal sovereignty and Native Peoples.

We would also like to thank Virginia Davis, Senior Policy Advisor, for her kind assistance throughout the course of this NCAI Grant. We greatly appreciated her guidance, as we addressed unanticipated challenges to fully implementing the *Nottawaseppi Huron Band of the Potawatomi Domestic Violence Code* and as we strived to fulfill the very important goal of this NCAI Grant to provide resources to other Native Nations as they seek to adopt a VAWA 2013-compliant domestic violence code in protection of their Tribal Citizens and community members.

As we mentioned in the beginning of this document, the ITWG has been a tremendous source of support in adopting and implementing the *Nottawaseppi Huron Band of the Potawatomi Domestic Violence Code*. While we are grateful to all those involved with ITWG, we would like to especially thank Michelle Demmert, Reservation Attorney, Tulalip Tribes (Pilot Project Tribe), Fred Urbina, Attorney General, Pascua Yaqui Tribe (Pilot Project Tribe), Megan LaFromboise, Attorney, Sisseton-Wahpeton Oyate (Pilot Project Tribe) and the Hon. Theresa M. Pouley. We greatly appreciate the tremendous support that each of you provided. Each of you so graciously gave of your time. We greatly appreciate your guidance.

We also wish to thank the VAWA Enactment Team and VAWA Working Group for their commitment to developing and implementing the *Nottawaseppi Huron Band of the Potawatomi Domestic Violence Code*. Their individual dedication to this collective process was key to ensuring that all critical components were included in the Code and in the implementation process.

Finally, we wish to thank the Nottawaseppi Huron Band of the Potawatomi Tribal Council. The Members of the Nottawaseppi Huron Band of the Potawatomi Tribal Council, individually and collectively, have demonstrated tremendous leadership in the efforts to end domestic violence. From the moment they authorized participation in the ITWG to today, their commitment has never wavered from the goal of adopting a code that exercises criminal jurisdiction pursuant to VAWA 2013. They did not concentrate their efforts solely in this task, having the wisdom to know the importance of developing services to help

heal those victimized by domestic and sexual violence, committing the resources wherever possible to create these services and authorizing grant applications when it would be difficult to commit those resources. They have also prioritized prevention efforts, showing wisdom in centering efforts in our youth to make true progress towards a nation free from domestic violence. From their actions, the Nottawaseppi Huron Band of the Potawatomi Tribal Council is incorporating the eradication of domestic violence into the very fiber of the Tribal Government, establishing clearly and without question that domestic violence is not a traditional value.

Chi Migwéché!

Elizabeth Cook

Staff Attorney

Hon Melissa L. Pope

Chief Judge