



# WHAT SHOULD TRIBAL COURT JUDGES KNOW ABOUT **DOMESTIC VIOLENCE** IN **CHILD WELFARE** AND **CUSTODY MATTERS?**

Native women have one of the highest rates of domestic violence among all ethnic groups with 47.5% of American Indian/Alaska Native (AI/AN) women experiencing domestic violence in their lifetimes.<sup>1</sup> The trauma of victimization may be magnified by historical trauma, a term used to describe, “cumulative emotional and psychological wounding,” of survivors caused by centuries of inflicted violence, colonization, and genocide.<sup>2</sup> Domestic violence in tribal communities has devastating consequences for families, including children. Forty-four percent of youth reporting physical teen violence also reported a history of child maltreatment; and 2 out of 3 had witnessed an assault between other family members.<sup>3</sup>

## **UNDERSTANDING DOMESTIC VIOLENCE**

Domestic violence is not limited to physical abuse or to those behaviors that are identified in statutes as criminal offenses. It can include a pattern of assaultive and coercive behaviors that operate at a variety of levels – physical, psychological, emotional, financial, or sexual – that one parent uses against the other parent.<sup>4</sup> The pattern not impulsive nor “out of control,” but is purposeful in order to gain compliance or control.<sup>5</sup> Many survivors do not report abuse. Looking beyond a tribe’s statutory definition of domestic violence may allow tribal family court judges to better identify and therefore take into account patterns of domestic violence in child welfare and child custody cases.

## **IDENTIFYING DOMESTIC VIOLENCE**

Unidentified domestic violence or unsafe intervention in domestic violence situations may contribute to poor outcomes for families including increased danger to a child and the non-offending parent.<sup>6</sup> Screening for domestic violence along with proper risk assessment and implementation of domestic violence best practices throughout the life of any case can assist tribal family court judges and others in the tribal justice system with informed decision-making that can improve outcomes for families.<sup>7</sup>

## **DOMESTIC VIOLENCE AND CHILD DEPENDENCY**

Removal from the home for domestic violence can be particularly traumatic for children in Native communities.<sup>8</sup> Helping children heal from exposure to domestic violence means having a consistent, supportive, and loving adult presence: most often a non-abusive parent.<sup>9</sup> Intervention with perpetrators can improve the quality of father-child relationships if it addresses attitudes and skills.<sup>10</sup> It is therefore imperative that tribal family court judges and others in the tribal justice system have the information and tools necessary to hold perpetrators of domestic violence accountable and to ensure no further harm to victims of domestic violence and their children.<sup>11</sup>

## DOMESTIC VIOLENCE AND CHILD CUSTODY

Survivors of domestic violence are often involved in child custody cases with their abuser.<sup>12</sup> Survivors are at higher risk after separation from their abusive partner and court proceedings or visitations offer an abuser opportunity to continue their abuse.<sup>13</sup> Visitation conditions and mandated batterer intervention treatment can help prevent this.<sup>14</sup> Understanding, identifying, and accounting for domestic abuse, therefore, can ensure that tribal family court justices and tribal justice systems designing parenting plans offer safer outcomes for families.

## RESOURCES

For more information on training and tools in domestic violence and its intersection with child welfare and child custody, contact the National Council of Juvenile and Family Court Judges, Resource Center on Domestic Violence: Child Protection and Custody at <http://www.rcdvcpc.org>.

For an example of screening tools for domestic violence see the Battered Women's Justice Project, SAFeR Project at <https://www.bwjp.org/our-work/projects/safer.html>.

See also, Tribal Law and Policy Institute's Tribal Domestic Violence Courts Fact Sheet & Tribal Domestic Violence Dockets Fact Sheet.

### CHECKLIST FOR DOMESTIC VIOLENCE CONSIDERATIONS FOR JUDGES

- Understand and identify what domestic violence is and how it impacts family court cases.
- Recognize the traumatic effects of family violence on children to make better-informed child welfare reunification plans.
- Be aware of the traumatic effect of past domestic abuse on survivors (especially children) and use this information in child placement and custody decisions.

<sup>1</sup> Center for Disease Control, *National Intimate Partner and Sexual Violence Survey: 2010-2012 State Report* (2017); NCJFCJ, *31 Facts for Domestic Violence Month* (October 2016); *Intimate Partner Violence in the U.S.* (Feb. 2014), [https://www.cdc.gov/violenceprevention/pdf/cdc\\_nisvs\\_ipv\\_report\\_2013\\_v17\\_single\\_a.pdf](https://www.cdc.gov/violenceprevention/pdf/cdc_nisvs_ipv_report_2013_v17_single_a.pdf).

<sup>2</sup> Brave Heart, M., Chase, J., Elkins, J., & Altschul, D. B., *Historical trauma among indigenous peoples of the Americas: Concepts, research, and clinical considerations*, 43 *Journal of Psychoactive Drugs*, 282–290 (2011); *Historical Trauma and Unresolved Grief: Implications for Clinical Research and Practice with Indigenous Peoples of the Americas*, Indian Health Service Presentation, [https://www.ihs.gov/telebehavioral/includes/themes/newihsthemel/display\\_objects/documents/slides/education/historicaltrauma\\_100412.pdf](https://www.ihs.gov/telebehavioral/includes/themes/newihsthemel/display_objects/documents/slides/education/historicaltrauma_100412.pdf).

<sup>3</sup> Arnitta Holliman, *Against All Odds: Resilience in Women Victims of Intimate Partner Violence*, April 6 – 8, 2006, available at <http://www.ncur20.com/presentations/3/364/-paper.pdf>.

<sup>4</sup> NCJFCJ *Checklist to Promote Perpetrator Accountability in Dependency Cases Involving Domestic Violence*.

<sup>5</sup> Id.

<sup>6</sup> Taggart, Shellie, *Strategies to Improve Domestic Violence Responses in CFSR Program Improvement Plans* (2011).

<sup>7</sup> Id., see also BWJP's SAFeR Project, which "is an approach to decision making in IPV-related family law matters," including screening, assessing the nature and context of the abuse; focusing on the effects; and responding to the DV in all recommendations, decisions, and interventions.

<sup>8</sup> NCJFCJ, RCDV: CPC, *31 Facts for Domestic Violence Month* (October 2016).

<sup>9</sup> Masten, A.S. (2006). *Promoting resilience in development: A general framework for systems of care*. In R.J. Flynn, et al. (eds.), *Promoting resilience in child welfare* 3-17.

<sup>10</sup> NCJFCJ, *31 Facts for Domestic Violence Month* (October 2016).

<sup>11</sup> NCJFCJ *Checklist to Promote Perpetrator Accountability in Dependency Cases Involving Domestic Violence*.

<sup>12</sup> NCJFCJ, *31 Facts for Domestic Violence Month* (October 2016).