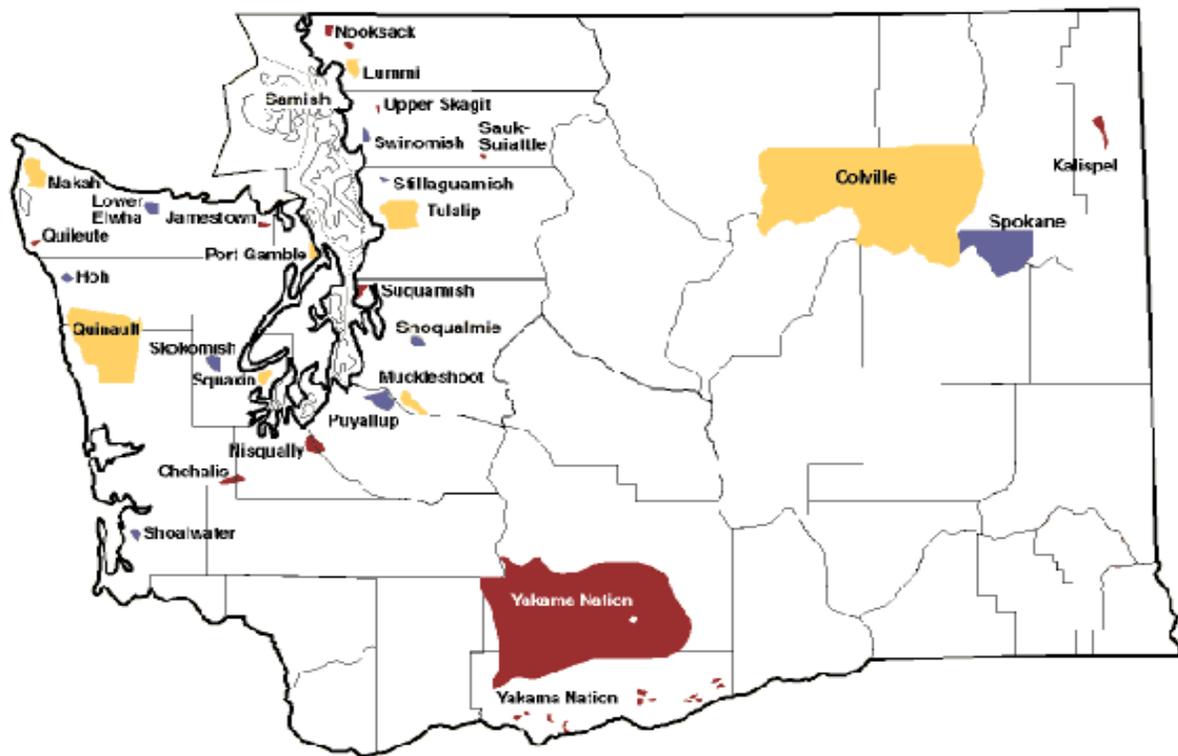


# THE LEGAL NEEDS OF NATIVE AMERICAN SURVIVORS OF SEXUAL VIOLENCE



## IN WASHINGTON STATE

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## ***PREFACE***

A U.S. Department of Justice study on violence against women concluded that 34.1% of Native American and Alaska Native women – or more than one in three – will be raped during their lifetime; the comparable figure for the United States as a whole, for women, is less than one in five.<sup>1</sup> Data gathered by the U.S. Department of Justice indicates that Native American and Alaska Native women are more than 2.5 times more likely to be raped or sexually assaulted than any other racial group of women in the United States.<sup>2</sup> They also suffer more violent attacks and are more likely to suffer injury.<sup>3</sup> Importantly, Native American survivors' of sexual violence are reported to be significantly *more* likely than women of other races to report their victimization to law enforcement.<sup>4</sup>

Sexual assault is the most underreported crime in the United States with only 16% of victims likely to report the crime to law enforcement.<sup>5</sup> However, despite the higher rates of sexual victimization and the higher rates of reporting to law enforcement among Native American women specifically, prosecution rates for sexual violence against Native American women remain remarkably low.<sup>6</sup> Some of these statistics may be attributed to complex jurisdictional issues created by limitations to tribal sovereignty. However, it would be irresponsible to attribute jurisdictional issues as the only reason for such poor response to Native American women who experience sexual violence.

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<sup>1</sup> Patricia Tjaden & Nancy Thoennes, U.S. Department of Justice, *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women*, 2000.

<sup>2</sup> Steven W Perry, *American Indians and Crime – A BJS Statistical Profile 1992-2002*, Bureau of Justice Statistics, US Department of Justice, Office of Justice Programs, December 2004, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/aic02.pdf>, visited 30 November 2006.

<sup>3</sup> Analysis developed by Ronet Bachman, Ph.D, using data from the National Crime Victimization Survey, averages from 1992-2001.

<sup>4</sup> Patricia Tjaden and Nancy Thoennes, U.S. Dept. of Justice, *Full Report on Prevalence, Incidence, and Consequence of Violence Against Women: Findings from the National Violence Against Women Survey*, (November 1998).

<sup>5</sup> D.G. Kilpatrick, C.N. Edmunds & A.K. Seymour, *Rape in America: A Report to the Nation* (1992).

<sup>6</sup> *Maze of injustice, The failure to protect Indigenous women from sexual violence in the USA*, Amnesty International Publications, 2007, available to download at [www.amnesty.org](http://www.amnesty.org)

In Washington State the prevalence of sexual violence among women in general is 38%; more than one in three women have experienced rape, attempted rape, forced sexual contact or child sexual abuse at some point in their lifetime,<sup>7</sup> with more than half of these victims being assaulted more than once.<sup>8</sup> Native American women were more likely to have been raped compared to white women.<sup>9</sup> In the Washington survey, approximately 48% of Native American women disclosed experiencing rape compared to 22% of white women.<sup>10</sup> Similarly less than 16% of women victimized in Washington reported the crime to law enforcement.<sup>11</sup>

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<sup>7</sup> Berliner, L., *Sexual Assault Experiences and Perceptions of Community Response to Sexual Assault: A Survey of Washington State Women*, Executive Summary, Office of Crime Victims Advocacy (October 2001).

<sup>8</sup> Ibid

<sup>9</sup> Id

<sup>10</sup> The racial and ethnic breakdown of the Washington State survey of women was approximately 88% White, 2% Black, 3% Asian, 2% Native American and 6% other, roughly similar to the general population of Washington State, US Census Data.

<sup>11</sup> Ibid

## I. INTRODUCTION

This report is about the impact of sexual violence on Native American women living in Washington State. Our objective was to identify the unmet legal needs of Native American women living on reservations in Washington State. This report is merely a starting point for people in Washington State who want to proactively address the issue of sexual violence among Native American women. Clearly there is much more work and learning that needs to be done before we can truly begin to affect this terrible epidemic. This report is no more than a presentation of what we did, what we learned and what we recommend for anyone looking to address the topic of sexual violence among Native American people and communities.

Washington State encompasses 29 federally recognized tribes, with 4 additional tribes seeking federal recognition. In addition to reservation based populations, King County is home to more than 75,000 urban based Native Americans.<sup>12</sup> As such we decided to include a forum on Native American urban based populations in order to fully assess the issue of sexual violence among the Native American population living in Washington State, and thus not limit this report to the legal needs of reservation based women.

Below is a chart of all the tribes in Washington, listed by county.

<b>COUNTY</b>	<b>RECOGNIZED TRIBE(S)</b>
Clallam	Lower Elwa Klallam, Jamestown Klallam, Makah & Quileute
Cowlitz	Cowlitz (not a reservation based tribe)
Ferry	Colville Confederated Tribes
Gray's Harbor	Chehalis & Quinault
Jefferson	Hoh
King	Muckleshoot & Snoqualmie
Kitsap	Suquamish & Port Gamble S'Klallam

<sup>12</sup> Statistics provided by United Indians of All Tribes Foundation, Seattle, WA.

<b>COUNTY</b>	<b>RECOGNIZED TRIBE(S)</b>
Klickitat	Confederated Tribes of the Yakama Nation
Mason	Skokomish
Okanogan	Colville Confederated Tribes
Pacific	Shoalwater Bay
Pend Oreille	Kalispell Tribe
Pierce	Puyallup & Nisqually
Skagit	Samish, Swinomish & Upper Skagit
Snohomish	Sauk Suiattle, Stillaguamish & Tulalip
Spokane	Spokane Tribe
Stevens	Colville Confederated Tribes
Thurston	Squaxin
Whatcom	Lummi & Nooksack
Yakima	Confederated Tribes of the Yakama Nation

Working with reservation based and urban based Native American populations requires a significant understanding of and appreciation for the context and historical framework in which violence against Native Americans has occurred within the United States. Without this understanding, we cannot fully appreciate the present day reality of the extremely high rates of sexual violence, poverty, and marginalization that Native Americans experience. This report begins by providing a very limited historical and jurisdictional framework in order to attempt to adequately contextualize the landscape in which sexual violence occurs for Native Americans who live in Washington State.

## **II. HISTORICAL & JURISDICTIONAL FRAMEWORK**

It is important to understand that the United States government has a legal responsibility to ensure protection of the rights and wellbeing of Native American and Alaska Native peoples, including a responsibility to provide social, educational and medical services. This is called the federal trust responsibility and is set out in

treaties between tribal nations and the federal government, further solidified in federal law, federal court decisions and policy. It includes the protection of the sovereignty of each tribal government.<sup>13</sup>

Against this backdrop are the complexities of jurisdiction on reservations, lands held in trust and other areas referred to as “Indian Country.”<sup>14</sup> Beginning hundreds of years ago when native nations were viewed as both sovereign entities and subject to the rule and property ideals of the colonizers, numerous and varied policies regarding the inherent sovereignty of tribes and the ability of tribal communities to govern themselves, were created that significantly limited tribal sovereignty, including but not limited to, a tribes ability to dispense criminal penalties against individual perpetrators of sexual violence.

In 1885, the federal government, under the Major Crime Act,<sup>15</sup> created legislation obligating itself to prosecute violations of major crimes occurring in Indian Country. This included rape and other sexually violent crimes.

In 1953, Public Law 83-280,<sup>16</sup> established a way for states to assume jurisdiction over reservation Indians.<sup>17</sup> PL-280 mandated a transfer of federal law enforcement authority to state governments in six states.<sup>18</sup> Other states, including Washington, were allowed to elect similar transfers of power, at the initiative of state residents.

In order to help explain Public Law 280 and its relationship to sexual violence, here is an except from Ada Pecos Melton and Jerry Gardner, *Public Law*

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<sup>13</sup> Indian Tribal Justice Support Act 25 U.S.C.A. §3601(2) (1994).

<sup>14</sup> Federal law defines Indian Country as: “All land within the limits of any Indian reservation”, “all dependent Indian communities within the borders of the United States” and “all Indian allotments, the titles to which have not been extinguished.”

<sup>15</sup> 18 U.S.C. § 1153 (1885).

<sup>16</sup> 18 U.S.C. § 1162, 28 U.S.C. § 1360 (1953).

<sup>17</sup> Arizona Supreme Court Justice Stanley G. Feldman. (State v. Zaman, 1994)

<sup>18</sup> California, Minnesota (except the Red Lake Nation), Nebraska, Oregon (except the Warm Springs Reservation), Wisconsin (except later the Menominee Reservation) and, upon its statehood, Alaska.

*280: Issues and Concerns for Victims of Crime in Indian Country*, American Indian Development Associates 2004.

Public Law 280 presents a series of important issues and concerns for Indian country crime victims and for those involved in assisting these crime victims. Public Law 280 is a complicated statute which has been very controversial since the time of its enactment. It has often been misunderstood and misapplied by both federal and state governments. Moreover, the practical impact of Public Law 280 has gone way beyond that which was legally required, intended, and contemplated.<sup>19</sup>

PL-280 has generally brought about an increased role for state criminal justice systems in "Indian country", a virtual elimination of the special federal criminal justice role (and a consequent diminishment of the special relationship between Indian Nations and the federal government), numerous obstacles to individual Nations in their development of tribal criminal justice systems, and an increased and confusing state role in civil related matters.

Public Law 280 also authorized any non-mandatory state, to take civil and/or criminal jurisdiction over Indian country within its borders. These non-mandatory states had the option of taking partial jurisdiction without tribal consent until after the 1968 amendments were enacted. In some instances, these transfers of jurisdiction under Public Law 280 have also been returned (retroceded) back to the federal government, overturned by the courts, or have never been implemented. Washington is an optional state. The optional states fall into two categories, ones with disclaimers in their state constitutions limiting state jurisdiction over Indian country and states without these state constitutional disclaimers.

In Washington, the state took criminal and civil jurisdiction over compulsory school attendance, public assistance, domestic relations, mental illness, juvenile delinquency, adoption proceedings, dependent children and operation of motor vehicles upon public roadways.<sup>20</sup> This means that any other crime, particularly crimes of sexual violence, remain in the jurisdiction of the federal government to prosecute – or not. As a result, there are many ways in which Public Law 280 may

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<sup>20</sup> RCW §37.12.010

affect sexual assault survivors residing in Indian country in Washington State, depending on the tribes PL 280 status:

**Full PL 280** jurisdiction means the tribe was subjected to or has requested full state civil adjudicatory authority and criminal jurisdiction over land within the exterior boundaries of the reservation.

**Partial PL 280 jurisdiction** (retrocession of state criminal and civil jurisdiction) means the tribe did not ask for full State extension of jurisdiction; or the tribe originally asked for full State extension of jurisdiction, but subsequently asked for it to be retroceded, i.e. given back to the federal government.

In 1968, the Indian Civil Rights Act,<sup>21</sup> (ICRA) was created which prohibits tribal governments from imposing any sentence that may exceed one year incarceration or a \$5,000 fine on *any* criminal defendant. As a result many tribes have understood they only have ‘misdemeanor’ type authority over criminal offenders.

**Post Indian Civil Rights Act (ICRA)** tribes that have been granted federal recognition after the enactment of ICRA are not subject to any PL 280 jurisdiction. Therefore, Washington does not, and cannot have criminal or civil adjudicatory jurisdiction over Indian Reservations created after ICRA’s enactment. Washington does, however, have full criminal and civil adjudicatory jurisdiction over any off-reservation individual trust allotments created prior to ICRA and those eight enumerated areas.

Lastly, a vast body of civil and criminal case law exists that address matters of jurisdiction, further complicating this area of law. Most importantly, however,

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<sup>21</sup> The Indian Civil Rights Act was included as title II of the Civil Rights Act of 1968, Pub. L. No. 96- 88, 81 Stat. 787 (1968), and is codified as amended at 25 U.S.C. §§ 1301-1303.

is a case called, *Oliphant v. Suquamish Indian Tribe*.<sup>22</sup> In *Oliphant* the U.S. Supreme Court did away with tribal criminal jurisdiction over anyone who is not a member of a federally recognized tribe. Thus, if someone who is a non-Native American rapes or sexually assaults a Native American on reservation land, the tribe has no jurisdiction or ability to punish the offender, or hold him accountable in any way.<sup>23</sup>

Because tribes have been denied the ability to prosecute non-Native American offenders in their criminal system, the obligation to affect justice for Native Americans who are sexually assaulted by non-Native Americans in their communities falls to the prosecutorial responsibility of the State of Washington or the federal government, depending on the PL-280 status of the tribe.

In summary it is critical to understand that tribal governments have had their sovereignty, significantly and prejudicially curtailed through discriminatory policies and laws. Although this is but a brief and cursory overview of very complex jurisdictional issues faced by law enforcement, criminal attorneys, advocates and criminal prosecutors, it is imperative that those working to end violence against Native American women are aware of these issues. Similarly, advocates and attorneys need to appreciate and understand aspects of the history of colonization and how that has impacted Native Americans within our state. Today the landscape for many Native Americans is one of living in communities that have been devastated by the impact of federal, state and local policies that encouraged assimilation and/or extermination of the tribes and their members.<sup>24</sup>

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<sup>22</sup> 435 U.S. 191 (1978).

<sup>23</sup> *Oliphant v Suquamish Indian Tribe*, 435 U.S. 191 (1978).

<sup>24</sup> Sarah Deer, *Sovereignty of the Soul: Exploring the Intersection of Rape Law Reform and Federal Indian Law*, 35 *Suffolk Law Review* 454 (2005).

### **III. PROJECT PARTNERS**

This project grew out of awareness about the high rates of sexual violence among Native American women and a commitment to work toward addressing this issue in a sensitive and respectful manner. With the support of committed partners we moved forward looking at this issue with a legal lens in Washington State. Our partners on this project were the Tribal Law & Policy Institute, the Northwest Tribal Court Judges Association, and the Native American Law Center Tribal Defense Clinic at the University of Washington School of Law.

#### **Washington Coalition of Sexual Assault Programs**

The Washington Coalition of Sexual Assault Programs is a membership based statewide non-profit coalition of forty rape crisis centers. The mission of the Coalition is to unite agencies engaged in the elimination of sexual violence through advocacy, education, victim services and social change.

**Catherine A. Carroll** began her work as a crisis line counselor for battered women and then went on to become a restraining order clinic volunteer and then to law school at New College School of Law in San Francisco. Over the past fifteen years she has worked with abused women who are incarcerated; Bay Area Women against Rape and WOMAN INC in San Francisco. Since 2002, Ms. Carroll has been the Legal Director at the Washington Coalition of Sexual Assault Programs (WCSAP) where she provides legal training and consultation to the legal community in Washington State on improving the response to sexual violence. She has created numerous legal resource materials, including an attorney practice manual. Recently Ms. Carroll partnered with the American Bar Association Commission on Domestic Violence to create *Standards of Practice for Lawyers Representing Survivors of Domestic Violence, Sexual Assault and Stalking in Civil Protection Order*

cases. Ms. Carroll is licensed to practice law in California and Washington.

**Christina Marie Entrekin** (Oneida) graduated from the Arizona State University College of Law Indian Program in 1998. She served the Washington State Bar Association's Indian Law Section as Chair from 2005 to 2006. Ms Entrekin has provided civil representation to Native persons in the areas of tribal youth at risk proceedings, women and children's advocacy, and special education as a staff attorney with a statewide civil legal services agency, acted as a consultant for National advocacy entities providing expertise and assistance regarding the Indian Child Welfare Act and the epidemic of domestic violence in Indian Country, and has worked to facilitate appropriate care and treatment of persons with disabilities. Ms. Entrekin continues to advocate for Native youth as a foster parent and community activist. She joined the Washington Coalition of Sexual Assault Programs in March of 2006.

### **Tribal Law & Policy Institute**

The Tribal Law and Policy Institute is a Native American owned and operated non-profit corporation organized to design and deliver education, research, training, and technical assistance programs which promote the enhancement of justice in Indian country and the health, well-being, and culture of Native peoples.

**Sarah Deer** (Citizen of the Muscogee (Creek) Nation) is currently employed as Staff Attorney for the Tribal Law & Policy Institute in Saint Paul, Minnesota, and is an online Instructor of Tribal Legal Studies at UCLA Extension and a recent Lecturer in Law at UCLA Law School. Formerly, Sarah worked as a Grant Program Specialist at the U.S. Department of

Justice in the Office on Violence against Women in Washington, D.C. Sarah received her J.D. with Tribal Lawyer Certificate from the University Of Kansas School Of Law and her B.A. in Women's Studies and Philosophy from the University of Kansas. While a law student, Sarah was employed as Assistant Director of Douglas County Rape- Victim Survivor Service, Inc. Sarah serves on advisory boards for numerous anti-violence organizations and projects, including the Legal Resource Center to End Violence against Women and the National Alliance to End Sexual Violence. Sarah is a co-author of two textbooks published by Alta Mira Press: Introduction to Tribal Legal Studies and Tribal Criminal Law and Procedure.

**Bonnie Clairmont** (Hochunk) has been an effective advocate for battered women and other sexual assault victims in the Native American community for the past 14 years. A skilled educator and leader, Bonnie was one of the first Native American women in the country to speak out and organize the Native American community to provide culturally appropriate education and services for victims. In 1981, Bonnie began her career in the battered women's movement at Women's Advocates, a shelter in St. Paul. This led to her instrumental role in the creation of Women of Nations, the first organization to address the issue of battering in the Native American community. Bonnie has developed a culturally specific training curriculum for a wide variety of programs that serve Native American sexual assault victims, and she has served on the Board of Directors of the Minnesota Coalition Against Sexual Assault as well as on the Attorney General's Task Force on Sexual Violence in 1988. Since 1989 Bonnie has served as a staff member of Sexual Offense Services of Ramsey County.

## **Native American Law Center, Tribal Defense Clinic, University of Washington School of Law**

The mission of the Center is to promote the development of Indian law, and to encourage Native Americans, and others with an interest in Indian law, to attend law school. They also act as a resource to Indian tribes, other governments and individuals in the Pacific Northwest, Alaska and across the country. In addition to a challenging and prestigious academic program, they are part of an extensive network of scholars, practitioners and students dedicated to the field of Indian law.

**Ron J. Whitener** (Squaxin Island) is an Assistant Professor at the University of Washington, School of Law. Professor Whitener has taught exclusively in the field of law related to American Indians and Alaska Natives. Professor Whitener is Assistant Director of the Native American Law Center at the Law School where he provides services to tribes in the area of law. He also directs the Tribal Court Criminal Defense Clinic which provides legal representation to low-income tribal members in tribal courts of western Washington State. Professor Whitener is a co-investigator of the University of Washington's Center for Genomics and Healthcare Equality. Prior to his employment with the University of Washington, Professor Whitener provided legal representation to the Squaxin Island Tribe of Indians.

## **Northwest Tribal Court Judges Association**

Northwest Tribal Court Judges Association's is an association of tribal court judges throughout Washington State. Their mission is to provide a forum for communication and cooperation among and between tribal court judges and other entities to enhance the training and skills of court personnel and to secure resources

to accomplish these ends, all in the interest of better serving tribal people, communities and our sovereign nations.

**Elizabeth Fry**, Judge Fry is the Executive Director of the Northwest Tribal Court Judge's Association. She is a member of the Access to Justice Board and on the Board's nominating and leadership Development Committee. She has been licensed to practice law in Washington since 1981 and resides in Omak, WA.

#### **IV. PROJECT OVERVIEW**

In February of 2006, the partners came together for a day of planning to develop an agenda that would both educate and stimulate discussion about sexual violence among Native Americans living in Washington State – and how to best identify their resulting legal needs. After considerable discussion, two objectives were determined. One was to provide education about the issue of sexual violence, separate from domestic violence, and the other was to open a dialogue with tribal communities about what happens when someone is raped in their communities. We identified geographic regions across the state where we would host a 'forum' with tribal communities to help meet the project objectives. At that time we also decided not to include state and federal prosecutors in the tribal forums because we wanted participants to have an authentic place for dialogue that was not subject to 'outsiders' views. The intent was to bring our findings to state and federal prosecutors in a separate forum.

The educational and/or morning part of the forum was focused on three areas: the difference between domestic violence and sexual violence, tribal law and sexual assault and the complex jurisdictional issues impacting the legal response to sexual violence. After the morning presentation portion of the training and a lunch

break, participants broke into small groups and were presented with a series of questions and hypothetical scenarios to help generate discussion about the issue of sexual violence in their communities. Each small group was facilitated by project faculty.

The forum materials are attached as Appendix A – Forum Agenda and Small Group Discussion Questions. The forums were presented in five different geographic regions of the state in order to maximize the number of tribal participants.

The WCSAP staff attorney conducted outreach to tribal governments and communities. Outreach efforts included contacting persons known to WCSAP from prior work in Indian Country, speaking to tribal program staff to ascertain who in their communities would be benefited by, and a benefit to, the regional forums; and conducting brief trainings to tribal communities about WCSAP, sexual violence rates in Indian Country and the purpose and goals of the project. Staff also conducted telephone calls and sent letters inviting participants to the regional forums.

The forums were held across Washington State over an 8 month period, in Yakima, Spokane, Bellingham, Seattle and Tacoma. In sum, more than 250 service providers, tribal leaders and community members were invited to participate in the forums. Participation was greater at some forum locations than others but each forum yielded varied participants including law enforcement, attorneys, service providers and community members. Of the 250 invited participants to the five forums, we had a total 74 participants.

The first forum was held in Yakima. Yakama Tribal employees attended and included participants from the Yakama Nation Police Department, the Office of the Prosecutor, and Office of the Public Defender, the Domestic Violence Program and

a tribal mental health provider.

The second forum, held in Spokane, hosted seven communities including Colville Confederated Tribes, Spokane, Kalispel, Quinault and Nez Perce. There were also Native persons from other Nations. Participating were health services personnel, domestic violence advocates, tribal attorneys, legal services providers, tribal public defenders and members of the private bar.

The third forum was held in Bellingham. Members of several communities participated, including Lummi, Nooksack, and Upper Skagit. Attending were civil legal attorneys, police officers, domestic and sexual violence advocates, volunteer community activists, contract defense counsel, mental health counselors, staff attorneys and tribal prosecutors.

The fourth forum was held in Seattle. This forum was specific to hearing from urban based native populations because we recognized that not all Native Americans living in Washington State, reside on reservations. We also wanted to compare and contrast how the issue of sexual violence among Native women, and their resulting legal needs may differ between rural and urban populations.

The fifth forum was held in Tacoma. Members from six reservation based communities participated in this forum: Squaxin Island, Suquamish, Shoalwater, Hoh, Quileute and Lower Elwah. Participants included tribal prosecutors, law enforcement, sexual assault advocates and vocational rehabilitation personnel.

The information gathered from all five forums illustrate significant similarities in tribal communities despite their distinct locations, customs, traditions and relationships with neighboring jurisdictions. We found that in each community there are parallel barriers that keep survivors from reporting sexual violence or seeking services.

## **V. PROJECT FINDINGS**

- **Sexual violence is widespread in tribal communities in Washington.**
- **Significant barriers exist to reporting sexual violence to law enforcement.**
- **Rape myths are prevalent and unchecked.**
- **Medical services are inadequate.**
- **Resources are severely limited.**
- **Tribal orders of protection are limited.**
- **There is a widely held belief in tribal communities that Non-native offenders are not prosecuted for sexual assault.**

### **A. Sexual violence is widespread.**

In general, the overwhelming response from participants was that sexual violence is widespread. Some law enforcement participants reported that they know of more than 20 rapes that occurred in the last year and that only about half were reported. Other community members believe the rate is much higher; perhaps even one-half of the tribal membership over the course of their lifetime. Participants also reported that most native youth, if not all, in the dependency system, have been sexually assaulted and that the issue is not limited to girls or women.

Many participants indicated that sexual violence is rampant in their communities, but that few incidents are reported to service providers and fewer still are reported to law enforcement. Participants indicated a widely held suspicion that persons don't want to discuss their experiences because sexual violence is relatively new in Indian Country. For example, in Lushootseed there is

no word for rape.

There was also disparity among the participants regarding rape statistics. For example, service providers from one community indicated more than 300 incidents in their community in one year, but the prosecutor believed there to have been as few as 5 in a two year period.

One service provider indicated that all her Native clients who seek services from her disclose a history of sexual victimization. According to other participants, 50% to 75% percent of all Native persons seeking social services are victims of sexual violence. Participants also voiced a belief that upwards of 90% of the parents who have children in state dependency care, are victims of historical trauma, including sexual violence.

## **B. Significant Barriers Exist to Reporting.**

Multiple barriers exist to reporting sexual violence to law enforcement. Responses from forum participants varied from community to community, but all of the communities reported that sexual violence is rarely reported.

### **1) Retaliation**

One community identified the most significant barrier to reporting is the fear of retaliation by the perpetrator or the perpetrator's family. Also listed as key barriers are the unspoken rule in the community that you don't go against your own and fear of gossip in the community.

### **2) Distrust of Systems**

Other participants indicated the most significant barrier keeping survivors of sexual assault from reporting their victimization is fear and distrust of systems, racism or maltreatment. Of least importance was the fear that the victim might be subjected to criminal penalty for past wrongs if they reported to law enforcement.

### **3) Protecting Family Honor**

Protecting family honor ranked lowest despite discussions about multigenerational sexual violence as a problem in tribal communities. According to participants, juveniles feel extraordinary pressure to protect family honor and suffer extreme self-blame. Juveniles don't want to dishonor their family, and many offenses are perpetrated by family members.

#### **4) Self-Blame**

Participants also reported that many victims blame themselves for their own victimization. This is particularly true if the victim has been drinking or trusted the person who victimized her.

#### **5) Lack of Adequate Training of Law Enforcement Response**

Participants reported that law enforcement is rarely trained on how to appropriately respond to a sexual assault victim. Some communities reported that the BIA particularly lacks training in this area.

### **C. Rape Myths are Prevalent and Unchecked.**

When asked whether the community response would differ if the victim had consumed alcohol before she was assaulted, nearly all agreed that it would. Specifically, participants indicated that the victim risks being seen as a liar, may fear arrest, or fear losing her children. Although the services to a victim who has been drinking will not differ, depending on her family connections and the offender's family connections and political status, she likely will not report nor seek services.

If a victim was drinking at the time of the assault, most participants believed that he or she will not report because of public opinion or self-inflicted barriers like shame and self-blame. Prosecutors indicated that it may be difficult to prosecute if she or he has memory issues related to the alcohol, which adds some credence to the belief of the participants that the crime will not be prosecuted by county

officials if reported.

**D. Medical Services are Inadequate.**

If a victim requires medical attention, there are no sexual assault nurse examiners (SANE) at any of the Indian Health Service (IHS) clinics or substations on the reservation. The IHS facilities can transport to either the IHS hospital or to a county hospital, but transportation would be provided by ambulance, as many rural tribal members may not have a vehicle. Cost and confidentiality concerns are also prohibitive. Further, participants indicated that services are limited because the IHS clinic isn't open in the evening or on the weekend.

Some participants indicated that their community IHS clinics do not assess victims of sexual assault or provide sexual assault nurse examiner (SANE) services. Reasons given varied from the clinic not wanting their doctors to work sexual assault cases and possibly having to go to court, or just that they do not have appropriately trained staff or equipment to conduct such examinations. Many communities indicated they would refer to facilities outside the community despite great distance.

Of those tribes on the Kitsap and Olympic peninsulas, none have SANE services at their local tribal or IHS clinics. Many rely on non-tribal clinics or hospitals that are located more than 50 miles away. Law enforcement is unable to provide transportation and the tribe does not have resources to purchase a tribal vehicle for this purpose. For one community, exams are only conducted when the nurse is available and he/she refuses to examine children. Thus the only option for any medical examination is more than 60 miles away which is prohibitive.

**E. Resources are Limited.**

Advocacy organizations available to tribal members in the northwest I-5 corridor are either county resource centers, county mental health service providers

contracted to work with tribal members or tribal victim of crime advocates. Only one tribe currently has some financial resources available to members who are victims of sexual assault. No participating tribes have code provisions to protect renters from eviction for non-payment or waiting list preference if a survivor needs to move because the assault occurred in their tribal housing. Often, because of small communities and limited housing resources, victims live next to and are exposed to their offender daily.

When participants were asked where a victim would go if she was sexually assaulted, the responses varied dramatically. Some indicated that she would go to the rape crisis center in their region or hospital or clinic. Others indicated she would likely to go a family member's home, or the tribal police department. Others indicated that the victim would first go to tribal police or the hospital off the reservation. Lastly, others reported that a survivor would likely go to the home of an elder, who also serves as a judge in the community.

From the urban based forum, participants reported there are four service agencies in King County equipped to provide culturally competent counseling and referral services. However, this does not meet the need. Among these agencies there is one sexual violence advocate and two counselors. These resources are insufficient to meet the needs of the community. For example, when a referral was made asking that services be provided to a Native elder who was a victim of sexual assault, the agency response was that it was not equipped to do so because the counseling and group services they provide are not "culturally appropriate." No alternative service was offered.

#### **F. Orders of Protection are Limited.**

All participants reported that their tribes do have code provisions for domestic violence orders of protection. However, none have civil protection orders

for victims of sexual assault where the offender is a stranger or known to the victim, but does not meet the statutory relationship requirement for a domestic violence protection order.

#### **G. Community Perception that Non-Native Offenders are Not Prosecuted**

Participants stated that regardless of the perpetrator's race, if a tribal member does report they will do so to tribal law enforcement officers. However, the collective sentiment was that a non-native perpetrator will not be prosecuted. Participants overriding perception was that when the victim is Native and the perpetrator a non-Native, he probably will not be prosecuted. And, although cases are referred to the county by tribal law enforcement, the case will be treated less seriously than if the victim were also non-Native.

### **VI. PROJECT RECOMMENDATIONS**

- **Perpetrators of sexual violence must be held accountable.**
- **Training for state and federal prosecutors on prosecuting sexual violence in Indian Country is critical.**
- **Cross jurisdictional agreements and protocols must be collaboratively developed and implemented.**
- **Outreach and education are critical to addressing this issue.**
- **Tribal civil codes need to be developed.**
- **Tribes are the best means for securing the best interest of their communities.**

#### **A. Perpetrators Must Be Held Accountable**

The United States Attorneys Office of the Western and Eastern Districts of Washington need to adequately respond by investigating and prosecuting cases of

rape committed against Native Americans. Washington State prosecutors similarly need to investigate and prosecute sex crimes that occur in Indian Country where they have jurisdiction. Cooperative arrangements should be delineated in written protocols and agreements between tribes and agencies that clearly describe their working relationships.

To adequately perform state prosecutorial functions pursuant to PL 280 in Washington, it is imperative that prosecutors are aware of which tribes are located within their jurisdiction and which of the three jurisdictional profiles the tribe, or tribes, represent. Once aware of the profile, each office of the prosecutor should undertake to work closely with their neighboring tribal community(s).

Finally, when tribes are prosecuting sexual offenses committed within their communities, tribal prosecutors should be aggressive at identifying and locating additional victims, additional incidences and other offenses so that jail time can be increased.

## **B. Training for State and Federal Prosecutors**

Knowing which agency has criminal jurisdiction and investigative and prosecutorial responsibilities are critical to adequately serving Native American communities. Prosecutors must understand how the location of the crime determines jurisdiction. Indian Country is all land within the limits of any Indian reservation under the jurisdiction of the United States Government, including rights-of-way running through the reservation and Indian allotments. Prosecutors must also know how the race of the offender affects jurisdiction.

Cases that involve a non-Native American perpetrator and a non-Native American victim are within State jurisdiction. Tribes retain jurisdiction over Native American offenders, but pursuant to PL 280 Washington also has jurisdiction. United States attorneys must create initiatives to increase prosecutions

of offenders who prey on native persons. Training programs should be created to increase US attorney knowledge of jurisdictional issues affecting tribes and offenders, and the responsibility undertaken by the federal government to prosecute major crimes. Trained attorneys must then undertake to accept referrals for prosecution from tribes and federal investigators.

### **C. Develop Cross Jurisdictional Agreement & Protocols**

Cooperation between Tribal and Federal law enforcement agencies could insure effective investigation and prosecution of sexual assault cases. Because the offense occurs on Indian land, the tribe has the primary responsibility to investigate and build a case against the perpetrator. Some tribes have their own criminal investigators. Nevertheless, the federal government also has a role. The FBI has the responsibility to investigate major crimes, regardless of where the crime occurred. Charging a defendant in both Federal and Tribal Court is not a violation of Double Jeopardy and it must be made clear who will undertake to prosecute the offense, one or both entities. It is therefore important for all agencies to understand their role, and how they will work cooperatively. It is also imperative that the victim and offender understand which agencies will undertake which responsibility. The United States attorney offices in Washington have victim advocates that assist in prosecutions. It is important that their role be identified and clearly explained to all parties, including the tribe, the victim and the offender.

Clearly defining expectations and responsibilities of both prosecutorial entities in written protocols is necessary to effect justice for Native American survivors of sexual violence. Cooperation between tribal and state law enforcement and prosecution agencies will insure effective investigation and prosecution of sexual assault cases. Protocols regarding the prosecution of offenders when both the state and tribe have jurisdiction is also fundamental to the effective

administration of justice.

It must be determined whether both entities will pursue prosecution or whether the tribe will defer to the state. Charging a defendant in both state court and tribal court does not amount to double jeopardy. Moreover, the state should not assume that concurrent jurisdiction means they are relieved of their obligations. Having written procedures will eliminate misunderstanding, misgivings and inconsistencies in the investigation and prosecution of sexual violence committed against Native persons in Washington State.

#### **D. Education & Outreach are Critical**

Because many tribal populations in Washington are so significantly underserved, many survivors are not unaware of what remedies may be available to secure their safety, privacy, housing, employment and/or legal rights in general. Tribes with domestic violence prevention programs are often not prepared to serve victims of sexual violence outside a domestic relationship because they have limited resources, staff is not adequately trained and because they are underserved by the mainstream/dominant culture's systems. In Washington, non-tribal sexual violence resource centers are not generally utilized by Native American survivors. Thus when services are sought there, the program staff often lacks the cultural knowledge or historical perspective necessary to provide culturally supportive and relevant services.

#### **E. Tribal Civil Codes Need to be Developed**

Tribal civil codes do provide a means of safety and protection from harm. However, the mechanism for obtaining a civil protection order is in the domestic violence context. As a result, many victims of sexual assault have no meaningful way of obtaining a tribal civil order of protection from the person who assaulted them. Even though most tribal codes define "familial" more liberally than state

codes, victims often remain ineligible for a protection order. Generally the civil remedy available to many sexual assault victims', who do not qualify for a domestic violence protection order, is the civil anti-harassment order. Some tribes in Washington do have code provisions for a tribal anti-harassment order, but many do not.

Tribal members who are victims of a sexual assault could benefit from tribal civil code provisions by creating a stay-away order. The stay-away order could afford victims of sexual assault protections similar to those that domestic violence victims can obtain: protection from the offender and a way to prevent any further contact between the victim and the offender.

#### **F. Supporting Tribal Sovereignty**

Tribes are the best means of securing the best interests of their communities. Tribal criminal law and procedure from a tribal perspective, which utilizes tribal statutory law, tribal case law, and the cultural values of Native peoples is the best means of eliminating sexual violence in their communities.

National statistics and the data collected during this project underscore the continued need for resources and organizations devoted to the issue of sexual violence against Native persons.

Despite limited financial opportunities, tribes and tribal communities possess the best cultural and social resources to serve their members. Native persons themselves are the best resource available to support victims of sexual assault. Native persons possess the best capacity to support victims from initial disclosure through any resolution chosen by the victim. Tribal traditional responses to any life trauma are still applicable and are the most effective and sustainable system. Tribal traditional responses must be supported.

## **VII. CONCLUSION**

Attempting to identify the unmet legal needs of Native American survivors of sexual violence living in Washington State is difficult. Because so many of the small group discussions and responses to the presentations and hypothetical scenarios were about validation and affirmation of the prevalence of sexual violence in tribal communities, it was difficult to focus on what the resulting legal needs may be. This was particularly true given that many communities lack adequate police response, have little or not access to specifically trained medical providers and often lack resources to access any services, medical or social.

This process did however reveal that the legal needs of Native American survivors of sexual violence are similar to other survivors – where safety, privacy, access to medical services, adequate housing and stable safe employment are critical needs. However, given the issues discussed here, it is and will continue to be very challenging for survivors to access justice and have many of their legal needs met, given the current political, legal and jurisdictional context in which sexual violence occurs. Indeed it is quite likely, based upon what we have learned, the high rates of sexual victimization that Native American women who live in Washington experience, is a direct result of the political, legal and jurisdictional landscape.

The complexities of jurisdiction cannot and should not continue to serve as an excuse to do nothing. Sexual violence is devastating our communities in Washington. Given the number of tribes within the state, there must be a political desire to develop clear multi-agency protocols to clarify jurisdictional and prosecutorial responsibilities for every tribal entity in the state. By creating clear avenues for the ability of the tribe, feds or state to prosecute sex offenses against

Native American women living in Indian Country, we evoke, at least the ability of holding offenders accountable. Once that occurs, then we are able to fully assess where prosecutorial responsibility – or irresponsibility lies.

Lastly, and perhaps more importantly, the lack of social services and trained medical personnel available to respond to sexual violence in tribal communities is shameful. In a state as wealthy as Washington that is home to more than 29 separate tribes, this report should serve as nothing less than an immediate call to action.

## APPENDIX A

### TRIBAL FORUM AGENDA

- 8:30      Welcome & Introductions: Elizabeth Fry, Esq.  
Opening Prayer: TBD
- 9:00      Distinction between Domestic Violence and Sexual Assault: Christina Marie Entrekin
- 9:15      Tribal Law & Sexual Assault: Sarah Deer
- 10:15     Video Presentation: *Rape Is...*
- 10:45     **Break**
- 11:00     *Rape Is...* Discussion
- 11:15     Jurisdiction, Part 1: PL 280 in WA: Ron Whitener
- 12:00     **Lunch Break**
- 1:00      Jurisdiction, Part 2: Civil/Criminal: Ron Whitener
- 2:00      Small Group Discussion Questions
- 3:00      **Break**
- 3:15      Report Back from Small Groups
- 3:45      Closing Summary and Evaluations

## TRIBAL FORUM

### SMALL GROUP DISCUSSION QUESTIONS

The following questions are designed to elicit discussion among participants who have gathered into small groups. In addition, it would be helpful if you could answer the following questions so that we can get a better sense of what rape victims may experience in your community. We will regroup to discuss your answers after the break. Please return these completed forms to Christina.

Please indicate which best describes your profession:

- |  |  |
|--|--|
| <input type="checkbox"/> Tribal Law Enforcement            | <input type="checkbox"/> Tribal Prosecutor |
| <input type="checkbox"/> Health Services/Medical Personnel | <input type="checkbox"/> Social Services   |
| <input type="checkbox"/> Advocate                          | <input type="checkbox"/> Other _____       |

1. Does your Tribal Code include provisions for civil “restraining orders” or “injunctions?”
2. Does your community’s clinic or IHS staff have the necessary training and medical equipment to document sexual assaults reported to them?
3. In your opinion, how many incidents of sexual assault occurred on the Reservation last year?
4. In your opinion, how many incidents of sexual violence were reported to tribal law enforcement in the last year?
5. Please rate the following reasons a survivor will not report a sexual assault in your community. *1 being the most significant reason, 6 being the least significant.*
  - Need to protect family honor
  - Fear of retaliation by perpetrator or by perpetrator’s family
  - Fear of gossip
  - Going against unspoken rules that you don’t turn in your own
  - Fear and distrust of systems, maltreatment and racist treatment
  - Fear they may be arrested for past legal problems unrelated to sexual assault

Please consider the following scenarios and provide your response to the questions below.

**A tribal member has been assaulted by a non-Native stranger. The rape occurred on the reservation outside a bar. Both parties had been drinking.**

- Where does she go?

- What services are available to her?
- If she were to report, who would she report to?
- What barriers exist for her given that she had been drinking?
- Will he be prosecuted? By whom?
- Would the services available to her be different if she were raped by another tribal member? If so, how?

**A tribal member has been raped by a non-Native stranger outside a bar. The bar is located just off the reservation. Both parties had been drinking.**

- Are the services different because the rape occurred off the reservation?
  - Who provides them?
- Will he be prosecuted?

**A tribal member has been forcibly raped by her neighbor. Both live in tribal housing. The woman wants to relocate to avoid seeing the perpetrator, who was NOT prosecuted.**

- What advocacy organizations or human services are available to her?
- Can she end her agreement with the Tribe? Are there other alternatives?

**A 13 year old tribal member is sexually assaulted by his mother's boyfriend, who is non-Native.**

- If he disclosed, who would he disclose to?
- What barriers will he face if he seeks medical help?
- Does your community provide youth services and education?
- If yes, do they address issues relating to inappropriate touching or teen violence?