Pocket Guide: Tribal Victim Advocacy in Criminal Cases

November 2022

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A product of:

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Part 1: Introduction

A. What This Pocket Guide Can Do
This Pocket Guide was developed particularly for community-based advocates as a quick reference guide to better assist victims as they navigate the criminal legal process. It was developed with the intention that community-based advocates often need tools that can better help them with accessing information quickly. This Pocket Guide contains things such as a quick review of the general criminal legal process and victim rights with an emphasis on safety planning at every juncture. While this Pocket Guide is designed primarily for community-based advocates, it may be useful for other professionals who work with victims.

For the purposes of this publication, a community-based advocate is an agent of social change and a biased supporter of victims of violence and their expressed interests who prioritizes victim safety and offender accountability in all aspects of advocacy. The authors recognize that there are other advocates that may be hospital-based, prosecutor-based, law enforcement-based, or court-based. The target audience is community-based advocates accompanying victims to court and assisting them with navigating the criminal legal process. All references to “advocate” or “advocacy” refer to the work of community-based advocates. More on the philosophy of advocacy grounding this Pocket Guide will follow.

B. What This Pocket Guide Cannot Do
This Pocket Guide does not take the place of training on the needs of victims and in many jurisdictions, state or tribal statutes require advocates to receive forty hours of in-person training that can include criminal justice protocols. This Pocket Guide should not take the place of advocates learning as much about the criminal justice protocols for each jurisdiction through in-person meetings with criminal investigators, prosecutors, and court personnel.

C. A Word About Victim Safety
There are many potential risks to safety that a victim may experience the moment they enter the criminal legal process. There are many fears that victims may have including fears for their personal safety, for the safety of their children and family, and that others in the criminal justice system will not believe them or blame them for the abuse.

There may also be fears of privacy and confidentiality violations. An advocate should inform the victim that all advocacy services are confidential, but there may be situations in which an advocate may be required to share information without the client’s consent (e.g., mandatory reporting). Grant funding may also come with confidentiality restrictions such as funding provided in the Violence Against Women Act and disbursed by the Office on Violence against Women (34 U.S.C. § 12291(b)(2)). The fears for safety must always be taken seriously and there must be safety plans in place to prevent further traumatization to the victim.

This symbol ▶️ will be used throughout the Pocket Guide to signify crucial safety issues to keep in mind when advocates are working with victims.
Part 2: Advocacy Philosophy

This Part provides background on advocacy work and the philosophy that can guide community-based advocacy efforts and informs this Pocket Guide.

Community-based advocacy in tribal communities is about being a good relative. Community-based advocates have two primary responsibilities:

1) Provide direct advocacy to victims; and
2) Engage in social and systems change work.

The basic tenets of advocacy are the empowerment of victims, the prioritization of victim safety, and the promotion of offender accountability. Confidentiality and privacy are cornerstones to safety and it is the sacred trust of advocates to protect the information shared by victims with advocates. In the wake of violence, victims are often left feeling powerless because the perpetrator’s primary motive is to gain power and control over the victim.

Advocates are not case managers because victims are more than just cases, but each is someone’s relative or friend who has experienced a trauma they did not cause. The advocate’s role is to support the victim’s autonomy, to believe, support, inform, and empower victims to make informed decisions. As such, advocates provide victims accurate information on details of the criminal justice process if that path is pursued by the victim. Advocates can be the voice for victims at their request but must respect victims’ ability to speak on their own behalf when they are able and willing to do so. A victim may not want to proceed in a criminal process. A victim may choose to withdraw from the process at any point. Victims have the right to change their minds without judgment or scrutiny, despite any urging by criminal justice personnel to not recant or refuse to cooperate with prosecution.

Systems and social change advocacy is an arm of advocacy. The work of advocates does not end with providing direct services, but extends to advocating for systems change to create more just and victim-centered responses and institutionalizing those responses through policy and protocol development and multidisciplinary collaboration. Systems change advocacy includes the importance of continually monitoring services that may be retraumatizing, victim blaming, not culturally appropriate, or disempowering to victims. The advocate’s role is to educate criminal justice personnel on trauma impact, share the importance of safety and confidentiality, and be observant of gaps in services. When working in coordinated response, there is a tendency for advocates to become jaded, or collude with others who are system-based professionals where their allegiance may be more focused on requirements of the system’s policies (e.g., court, hospital). It is important for community-based advocates to be clear about their role and that their first allegiance is to the victim. A community-based advocate acts as a conduit between the victim and criminal justice system to communicate the lived experience of victims. This is why community-based advocates are often referred to as biased supporters of victims.
Community-based advocates also provide social change. It is believed that as Native people we are all related, that what impacts one person may impact family and community. Advocates exemplify being a good relative by educating the community about the seriousness of the problem of violent crime; that it is not a part of our tribal traditions but a learned behavior from a history of colonization. It is important for community members to understand that the use of violence is a choice and offenders need to be held accountable for that choice. Advocates educate service providers and surrounding communities on the best way to assist victims and their children from a victim-centered perspective while prioritizing victim safety and offender accountability.

The preceding diagram shows the victim at the center along with the word *safe*. It would be challenging for any victim to come forward after being threatened or having family members threatened. Keep in mind that victims may have been deprived of choice, so the ability to be forthcoming with people they hardly know takes courage.

The circles around the victim indicate the investment that service providers must make to keep a victim safe and to ensure that their needs are addressed. Service providers must also remember that while this investigation is happening, the victim may continue to have needs. If the victim has children, the children may have needs especially if the family will be rebuilding their lives after escaping and surviving a traumatic incident of violence.
Initial contact tips to build trust

- Check if there is a need for emergency medical attention.
- If in person, find a private, safe place to visit with the victim. Perhaps offer water, coffee, or whatever might be available. This is the traditional way.
- Remove all distractions.
- Acknowledge the courage it took for the victim to reach out and disclose the abuse.
- Express your willingness to want to help the victim.
- Provide as many safety measures as possible, including safety assessments throughout the process and determining if the victim wants to develop a safety plan.
- Take time to visit with the victim to create trust. Remembering the victim may have been assaulted by someone who they trusted, someone with whom they have emotional attachment.
- Inform the victim of their rights and options so they can make informed decisions.
- Address basic needs (food, clothing, concerns about children, housing).
- Avoid replicating tactics used by the perpetrator (appearing forceful, pressuring the victim to make decisions).
- Make sure the victim knows that you respect their decision-making process.
- Acknowledge the harm caused.
- Avoid taking the victim’s reluctance to divulge information personally.
- Ask the victim, “How can I help you?”
- Offer supportive comments, “I’m sorry this happened to you” or “The abuse was not your fault.”

Advocacy prep for assisting victims navigating legal processes

- Become familiar with the information requested and processes required to file a police report in the jurisdictions you may help victims navigate.
- Become acquainted with local law enforcement professionals and prosecutors to develop cooperative relationships to enable sharing information as appropriate, sharing resources, and providing mutual support.
- Become familiar with the process for requesting a protection order (criminal no-contact order or civil order for protection). See the Glossary for definitions of criminal no-contact order or civil order for protection.
- Become familiar with criminal statutes regarding crimes of violence in jurisdictions you may help victims navigate.
- Copy and review the definition of “victim” in the jurisdiction where the crime is being prosecuted. Outline the requirements to meet the definition of “victim.”
- Copy and review the statute that triggers the victim’s rights in the jurisdiction where the crime is being prosecuted.
- At the victim’s request, be prepared to assist with asserting victim’s rights at the earliest opportunity and throughout a criminal case.
Ongoing advocacy action steps when providing legal advocacy

- Protecting victim information.
- Providing emotional support.
- Helping victims with ongoing safety planning.
- Assisting the victim with obtaining a protection order if this remedy is available (in both civil and criminal systems).
- Providing information to the victim on available legal protections and community resources.
- Obtaining information from law enforcement/jail regarding arrests, where the defendant is being held, charges filed if any, and how long the defendant will be held if known.
- Accompanying the victim as needed and requested to hearings, trial, and appointments.
- Assisting the victim with hearing preparation (in civil and criminal systems).
- Working with other advocates who may be involved in the case if needed and requested by the victim while adhering to confidentiality policies.
- Assisting the victim through the civil legal process working with child protection agencies and making referrals as needed for civil legal representation.
- Monitoring cases for compliance with policies, protocols, and codes.
- Providing follow up on cases as needed and appropriate.

Safety Precaution: At initial contact by the victim, it is important to do a safety assessment particularly if this is a recent assault. If the victim is calling, ask where they are calling from, location of perpetrator, whether there are children involved and their safety, whether emergency medical attention is needed, and if the victim requires help from law enforcement or paramedics.

Ongoing attention to safety needs

- Does the victim know about their rights in the criminal justice system?
- Does the victim know about confidentiality policies?
- Does the victim need help with safety planning?
- Does the victim need a referral to a shelter if home is not safe?
- Does the victim know about the option of obtaining a civil order for protection (OFP) if the defendant is released from prison or jail?
- Does the victim know how to report a violation of the civil OFP or criminal no-contact order?

Safety Precaution: Safety planning specific to courtroom appearances is critically important. Victims may have a false sense of security. They may think that being surrounded by people like the bailiff, lawyers, friends, and family in the courtroom will keep them safe. Victims may feel it is okay to let their guard down. However, studies have shown that violent outbursts can happen anywhere, even in well-guarded places.
Part 3: Victim’s Rights

Victim’s rights laws are important because they ensure that the victims are informed of and allowed to participate in the criminal process. Until recently, criminal justice systems often focused only on the defendant’s rights and were seemingly indifferent to the victim’s needs. Victim’s rights may vary from jurisdiction to jurisdiction.

A. Defining “Victim”

Each jurisdiction will define the term “victim” and the definition of “victim” may vary for different purposes. For example, the definition of a “victim” for purposes of state victim compensation benefits may be different from the individual who qualifies as a “victim” for victim’s rights in a jurisdiction.

Advocacy action steps:
- Gather relevant victim’s rights statutes that define the term “victim.”

B. Crimes Triggering Victim’s Rights

The type of crimes that trigger the application of the victim’s rights statutes will vary from jurisdiction to jurisdiction. The types of crimes may include particular felonies, all felonies, specific misdemeanors, or all misdemeanors.

Advocacy action steps:
- Create a safety plan with the victim.
- Gather relevant statutes that define the types of crimes that will trigger victim’s rights.
- Discuss available rights with the victim.
- Assist victim in completing any necessary documentation that may include filing a police report, gathering evidence of injuries and associated cost of injuries, and determining the need for a protection order (criminal no-contact or civil OFP).

C. Victim’s Rights At-a-Glance

Note that each state and tribe are unique with respect to the statutory victim’s rights provided to victims.

Generally, the following are core rights being utilized in some jurisdictions.

- The right to be treated with fairness, dignity, sensitivity, and respect.
  The right to fairness, dignity, sensitivity, and respect is the right to have one’s rights considered within the criminal justice system including due process during the criminal proceedings. This right also encompasses the victim’s right to protect personal information from public disclosure. In addition, tribes could consider
language inclusive of needs resulting from a disability, sexual orientation, or gender identity.

**The right to attend and be present at criminal justice proceedings.**
Victims may have the right to attend proceedings during the criminal or juvenile justice process. The proceedings that victims may attend, such as bail hearings, trials, or parole hearings, are outlined in federal, state, or tribal law.

**The right to be heard in the criminal justice process, including the right to confer with the prosecutor and submit a victim impact statement at sentencing, parole, and other similar proceedings.**
Victims may have the right to make written or oral statements during the criminal or juvenile justice process. Every state gives victims the right to submit a “victim impact statement” at sentencing. Many states also allow victims to make a statement at bail or parole hearings or to meet with the prosecutor to discuss a plea agreement.

**The right to be informed of proceedings and events in the criminal justice process, including the release or escape of the offender, legal rights and remedies, available benefits and services, and access to records, referrals, and other information.**
Victims may have the right to be informed of events and proceedings in the justice process, such as trial or release of an offender from custody. Victims may also have the right to information about support services, the criminal or juvenile justice process, how to contact officials or agencies, or other matters.

**The right to protection from intimidation and harassment.**
Victims may have the right to be protected from intimidation or harassment by the offender or others involved in the criminal or juvenile justice process. Protection may include providing a separate waiting area in court for the victim, allowing victims to seek a court order preventing the offender from contacting the victim, or prohibiting improper questioning by a lawyer.

**The right to restitution from the offender.**
Victims may have the right to obtain restitution, or court-ordered reimbursement from offenders who have caused financial harm. Depending on the type of crime, restitution may be mandatory or optional.

**The right to privacy.**
Victims may have the right to protect the privacy of personal information, such as their name or identity, address, and phone number contained in criminal/juvenile justice documents, compensation records, and court testimony, as well as contact information provided for notification purposes. Certain victim populations, including children, victims of sexual assault, domestic violence, stalking, or trafficking, the elderly, and other vulnerable populations may need further protections.

**The right to apply for crime victim compensation.**
Victims may have the right to be financially compensated for certain injuries or damage caused by the crime. States operate victim compensation programs. Victims of federal crime or crime on tribal lands may apply for compensation in the state in which they live. Victims must file an application with the relevant compensation program and meet certain eligibility requirements.

- **The right to the expeditious return of personal property seized as evidence whenever possible.**
  Victims may have the right to the return of their personal property being held as evidence. Return of personal property can occur when the property is no longer needed as evidence.

- **The right to a speedy trial and other proceedings free from unreasonable delay.**
  Victims may have the right to have the case resolved within a reasonable amount of time. Some states require that courts consider the interests of the victim when ruling on a request to delay, or “continue,” a trial.

- **The right to enforcement of these rights and access to other available remedies.**
  A few states give victims a way to have their rights enforced. In some states, victims may be able to file a complaint with a state agency. In others, victims may have the right to file a limited legal action to enforce the victim's rights.

**Advocacy action steps:**
- Review and discuss applicable victim’s rights with the victim.
- Assert the victim’s rights as designated by the victim.
- Assess safety needs of the victim as rights are asserted and modify the safety plan as appropriate.
- Revisit the available rights often with the victim.

**D. Victim’s Rights Enforcement**
Knowing the statutory victim’s rights enforcement process is critical. *Note that the enforcement mechanism may designate an individual agency responsible for asserting the rights such as a prosecutor, law enforcement, or the court.*

**Advocacy action steps:**
- Copy the statutes applicable to enforcement of victim’s rights.
- Discuss enforcement options with the victim and allow the victim to guide enforcement efforts.
- Assist victim with completion of any documentation to enforce victim’s rights.
- Attend any enforcement meetings with victim as requested.
Part 4: Advocacy and the Criminal Legal Process

This Part will provide a general introduction to the criminal legal process and considerations community-based advocates can evaluate at each stage. These considerations address issues related to courtroom appearances and provide action steps through each stage of the criminal justice process with safety planning as a high priority.

It is important to acknowledge that each tribe will have laws dictating criminal procedure so while this chapter provides a general introduction, it is always important to consult tribal laws or the laws of the jurisdiction you are helping the victim navigate. Criminal legal systems can consist of law enforcement, court-based or law enforcement–based victim advocates, prosecutors, public defenders, judges, and corrections. Each discipline plays an important role in responding to crimes occurring within tribal communities.

Additionally, legal advocacy by community-based advocates can involve court appearances. Courtroom appearances, whether in tribal, state, or federal court, are often stressful. Remember, stay in tune with the victim’s needs and fears. Be sure to address them before and throughout the court appearances. Knowing a few tips for courtroom appearances may calm nerves, especially around safety planning. Accordingly, you will see the following symbols noting Safety Precautions and Courtroom Appearance Tips throughout this Part.

Safety Precaution
Courtroom Appearance Tip

Criminal Legal Process

Once a crime is alleged to have occurred, there are generally five stages within most tribal criminal justice systems:

<table>
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<tr>
<th>A. Crime Reported by Victim or Witness¹</th>
<th>B. Investigation &amp; Arrest</th>
<th>C. Prosecution &amp; Pretrial Services</th>
<th>D. Adjudication</th>
<th>E. Sentencing</th>
<th>F. Post adjudication &amp; Corrections</th>
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<td>▪ Interviews</td>
<td>▪ Charges Filed/Complaints</td>
<td>▪ Arraignment</td>
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<td>▪ Investigations</td>
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From the time that a crime is reported, there are a number of criminal justice system professionals that will have specific responsibilities related to the investigation, prosecution, and adjudication of the crime.

Note that every criminal legal system will vary. Consider developing a chart that reflects the roles and responsibilities of criminal justice system professionals in your tribal jurisdiction.

A community-based advocate is important to the effective implementation of a criminal justice system process. The advocate provides a support system for the victim as they interact with various criminal justice system professionals and assists with ensuring effective communication between criminal justice system professionals and the victim. The community-based advocate may:

- Help to protect confidential and privileged information.
- Help the victim to better understand the criminal justice system process.
- Assist the victim with the submission of documents and statements to law enforcement and the court.
- Accompany the victim to meetings and court hearings.
- Serve as a liaison between criminal justice system professionals and the victim to foster timely and effective notification on matters relevant to their case, including release of the defendant.
- Express safety concerns to criminal justice system officials with the victim’s consent.
- Develop safety plans to support the victim.
A. Crime Reported
A crime may be reported to law enforcement at the scene of the crime or after the crime has occurred. Regardless of timing of a disclosure, a prearrest investigation may occur at the scene or following the disclosure. A law enforcement report will be developed to document the victim’s disclosure of an alleged crime.

**Advocacy action steps:**

- Provide information to the victim on available legal protections and community resources.
- Provide a law enforcement phone number so a report can be made in the jurisdiction where the crime occurred.
- Inform the victim that a delayed report can always be made.
- Discuss pros and cons of filing a police report if the victim is undecided about reporting.
- Offer to provide emotional support during the report.
- Be present during interviews as requested by the victim.
- Let the victim know what information the police will need such as date of crime, what crime occurred, location of the crime, who committed the crime, who witnessed the crime, who was told of the crime, whether the victim sought medical attention for any injuries, or if victim needed transport to medical facility. Inform the victim that law enforcement may ask some sensitive questions.
- Continue advocacy, intervening on behalf of the victim when appropriate such as if the law enforcement officer asks inappropriate information irrelevant to the crime or has a victim blaming attitude. Ask to speak to law enforcement officer privately if needed.
- Assist the victim in getting information about the status of the case (including the case number).
- Provide ongoing support, advocacy, and information during the investigation particularly as it relates to victim’s safety. This is a very volatile time for victims because the perpetrator may have threatened violence if the victim reports to authorities.
- Provide assistance with any civil matters (harassment restraining orders, OFP, etc.)

**Safety Precaution:** Check in with the victim about safety needs. Provide information, if possible, regarding the abuse’s location. Call the victim to inquire about the victim’s needs in their current environment.

B. Investigation and Arrest
A prearrest investigation may occur at the scene and/or following the disclosure. During the investigation stage, law enforcement will collect physical evidence such as taking photographs of injuries (at the scene and in the days following), collecting or photographing damage to property, collecting documents such as medical records or phone records, and interviewing the alleged perpetrator. Evidence is collected to corroborate the victim’s account of the incident, document injuries or damages, and gather other evidence to support a prosecution. Law enforcement will also follow up with any potential witnesses. If tribal laws require the
prosecuting attorney to decide whether charges will be filed, that review will occur before an arrest is made. Alternatively, if tribal law allows, an arrest may occur, at the discretion of law enforcement, either at the scene or after the alleged crime has been reported.

**Advocacy action steps:**

- Provide information regarding the process for obtaining offender’s case status.
- Provide the victim with the phone numbers for jail and criminal investigator who can provide status updates (arrest, charged, not charged, incarceration status, release, etc.).
- Keep the victim informed of the status of the case if there is criminal justice involvement.

- **Safety Precaution:** The community-based victim advocate should carefully explain the risks of disclosing information to hospital, prosecutor, or law enforcement advocates as tribal law may require certain information be shared without the client’s consent.
- **Court Appearance Tip:** Learn the location of and tour any tribal court and/or detention facilities.

C. Prosecution and Pretrial Services

**Pretrial**

During the pretrial stage of the criminal justice system process, charges will be filed against the defendant. Charges are typically initiated when the tribal prosecutor files a charging document or a complaint. In some tribal jurisdictions, the grand jury process may be used to decide whether the defendant will be formally indicted and whether the case will proceed to trial. Although, the grand jury process is more common in federal court than it is in tribal court.

**Cases Not Charged**

**Advocacy action steps:**

- Address safety concerns of the victim and modify the safety plan as appropriate.
- Provide continuing support services and advocacy as needed and requested by the victim. Important to provide emotional support that the case will be on file and more evidence can be added.
- At the victim’s request, contact the charging attorney/prosecutor for information on the decision not to charge.
- Accompany the victim to meet with the prosecuting attorney to discuss reasons for not charging.
- Provide acknowledgment that the decision to not charge was not because the victim was not believed but because prosecution determined the case did not meet the threshold of proving elements beyond reasonable doubt to successfully prosecute.

- **Safety Precaution:** Safety plan with the victim as the perpetrator or perpetrator’s family may retaliate or try to reengage with the victim.
Safety Precaution: If a protection order is in place, the advocate may assist the victim with reporting any violations to the appropriate authorities.

Charged Cases

Advocacy action steps:

- Facilitate communication between victim and Victim Witness Advocate assigned to the case, as requested by the victim.
- Accompany the victim when the victim is to meet with the Victim Witness Advocate as requested by the victim. Ensure the victim knows the services of the Victim Witness Advocate are prosecution-based and information shared with the Victim Witness Advocate will be shared with prosecutor(s).

D. Adjudication

After the criminal complaint or indictment has been filed, the defendant will make an initial appearance before the tribal court (sometimes called an initial appearance and/or an arraignment) to enter a plea of guilty or not guilty and to inform the tribal court regarding their choice for a jury trial or a bench trial. During the pretrial stage, there may also be a need for preliminary hearings to address evidentiary matters or pretrial release terms and conditions. During this phase of the criminal justice system process, plea agreements may be negotiated between the prosecutor and public defender/defendant.

Pretrial release: The pretrial release hearing will focus on whether the defendant is entitled to be released pending the outcome of the trial. During this phase, the judge will consider whether bond must be posted, the amount of bond, and the terms and conditions of the bond. The victim may have the option to provide a statement orally or in writing to the court to identify safety concerns for the judge and to better inform the release terms and conditions that the judge puts in place.

Plea agreements: Plea agreements may be initiated by the tribal prosecutor and involve a formal offer being made to the defendant wherein the defendant would agree to plead guilty to the crime in exchange for a specific sentence. The three basic pleas in a criminal case include guilty, not guilty, or nolo contendere. Generally, guilty is an admission of guilt as charged; not guilty is a denial of the charges; and nolo contendere (no contest) is neither a denial nor admission of the charges but an agreement to move directly to sentencing as if a guilty plea had been entered. The victim should be contacted by the prosecutor before a plea agreement is offered to the defendant to ensure that the victim is informed and can express any concerns.

No-contact orders: No-contact orders that prohibit a defendant from having contact with a victim of a crime can be put in place at three different points in the criminal justice system process: (1) the pretrial phase as a condition of release; (2) the sentencing phase; and (3) postadjudication term of probation. In a criminal process, the
prosecution will request a no-contact order on behalf of the victim. Whether no-contact orders are mandatory or discretionary is a matter of tribal law.

i. Mandatory: Some tribal laws require the judge to issue a no-contact order when specific crimes are charged. This is common in domestic violence cases as part of a pretrial order and as a sentencing or probationary term. When tribal law requires the tribal judge to issue a no-contact order, there is no need for the tribal prosecutor to seek such an order. However, the prosecutor should communicate to the victim that a no-contact order will be issued by the court.

ii. Discretionary: Some tribal laws place the decision of whether to issue a no-contact order within the discretion of the judge. When a no-contact order is discretionary, the prosecutor will need to make the request during the pretrial or sentencing phase of the criminal justice system process. It is important that the prosecutor communicate with the victim before seeking a no-contact order.

Safety Precaution: Safety plan for court appearances.
- Learn as much about the perpetrator as possible, particularly if the advocate has not seen them before this. Obtain a description of perpetrator, a picture, the make, model, and color of perpetrator’s vehicle, and information about friends who may accompany perpetrator.
- Request law enforcement accompaniment to the courthouse and courtroom.
- Inquire about the presence of cameras in the parking lot. Park near cameras and entrances closest to the courtroom if possible.
- Ensure that anyone accompanying the victim has the information about the perpetrator and ask those accompanying the victim to remain vigilant of the perpetrator at all times.
- Accompany the victim and remain at victim’s side at all times such as when the victim needs to use the restroom. Find out where the restrooms are located in advance.
- Identify a safe room where an advocate, family, and friends can wait with the victim until the victim is called or wants to be in the courtroom.
- Identify all exits out of the courthouse in case there is a need to make a quick escape.
- Inform the bailiff or court security in advance that the perpetrator should not attempt to engage with the victim or come close to the victim for any reason.
- Leave the courtroom and courthouse accompanied, perhaps request that the bailiff or courthouse security officers accompany the victim to their vehicle. If possible, someone may want to pick up the victim at the exit door.

Court Prep/Decorum Tip: Demonstrate a deep respect for the tribal sovereign. Tribes are all unique sovereigns with their own customs, traditions, and social norms. Do your
homework prior to appearing in the tribal court. Know whether tribal law allows a community-based advocate to speak on behalf of the victim.

**Jury trial or bench trial**

During the pretrial stage of the criminal justice system process, the defendant will generally have the option to request a trial before a jury or before a judge. If the jury trial is requested, the judge will maintain control of the courtroom, make evidentiary decisions, and provide instructions to the jury once selected. However, a jury of peers will determine the guilt or innocence of the defendant. If a jury trial is chosen, the tribal court will schedule a pretrial hearing to select a specific number of jurors.

If the defendant chooses a trial before a judge, it is referred to as a bench trial. In a bench trial, the judge will maintain control of the courtroom, make evidentiary decisions, and serve as the ultimate trier of fact in the case.

*Note that upon the request of the prosecution or defense, the judge may, prior to or during the examination of a witness, ask witness(es) to exit the courtroom to avoid hearing other witness’s testimony. This is known as witness sequestration or witness exclusion.*

**Trial including pretrial**

**Advocacy action steps:**

- Coordinate with the Victim Witness Advocate what information will be provided to the victim.
- Inquire and note how to schedule a visit with the prosecutor.
- Inquire and note how to report victim concerns with law enforcement.
- Accompany the victim to hearings, meetings with prosecuting attorney, Victim Witness staff, and others as requested by the victim.
- Assist victim with safety concerns while attending hearings, trial preparation, attending the trial, and conditions of offender release. Arrange for a private meeting room until it is safe to enter the courtroom. Make note of exits and park near the entrance to the courtroom if possible. Inform court security and bailiff of any risks.
- Attend trial during victim testimony and other testimony if requested by the victim.
- Provide ongoing support as needed.
- If you have a tribal coalition in your state or region, it may be helpful to contact them to obtain additional information and training on navigating the criminal justice system, the advocate’s role in the criminal legal system, and local laws.

**Court Decorum Tip:** Helpful tips include:

- Being on time for court and urge the victim to be on time, which usually means being in the courthouse at least thirty minutes prior to the hearing.
- Making sure the victim has a safe and private place to wait for the case to be called (you might call ahead and ask the court clerk for such a space).
NOT bringing confidential information with you to court unless court ordered (through a subpoena duces tecum) to do so. This is critical as any documentation that is brought to court is subject to discovery.

Dressing respectfully and advising your client to do the same. This would include conservative dress for the tribal community.

Standing when speaking to the judge.

Speaking clearly and loudly enough so the recorder will capture your words.

Usually sitting on the side of the courtroom as the victim’s attorney.

If the victim has been served with a subpoena, appearing at the time and place commanded. Do not disrespect the tribal court by not appearing.

If the victim has been served with a subpoena duces tecum, appearing at the time and place commanded and bringing the documents listed in the subpoena duces tecum. (The victim may need to seek assistance of legal counsel to object to the disclosure of records.)

NOT discussing the case while on the courthouse grounds. It is amazing how many ears are in very private places on the courthouse grounds.

**Acquittal or Conviction**

At the conclusion of the bench or jury trial, the defendant will either be acquitted of the offense or convicted of the offense. Acquittal means that the trier of fact did not find sufficient evidence that the defendant perpetrated the crime and they will therefore be deemed not guilty. Conviction means that the trier of fact did find sufficient evidence existed to support the complaint. Conviction means the defendant has been deemed guilty and the case will proceed to the sentencing phase.

**Advocacy action steps:**

- Acknowledge the courage the victim has shown throughout the process from the initial report to the end.
- If the case is acquitted, reassure the victim that an acquittal does not mean that the jury or the judge did not believe the victim.

- **Safety Precaution:** Safety plan for the conclusion of trial and be prepared for acquittal or conviction. If acquitted and the victim is present, you may want to plan for accompaniment to the victim’s vehicle or exit from the court house. Ongoing safety planning will be essential.

**E. Sentencing**

The sentencing stage of the criminal justice system process will occur after the trial if the defendant has been found guilty, or after arraignment, if the defendant pleads guilty. During the sentencing stage, the judge may be bound by tribal law in assessing a mandatory sentence, considering specific factors before determining a sentence, or the sentence may fall within the complete discretion of the judge. In many tribal jurisdictions, a victim will be asked to submit a
victim impact statement to the court prior to a sentence being imposed or they may be asked to give a victim impact statement at the sentencing hearing.

Presentence Investigation

Advocacy action steps:

- Provide information to the victim regarding the presentence investigation process.

Sentencing

Advocacy action steps:

- Assist victim with victim impact statement, if requested.
- Accompany victim to sentencing hearing, if requested.

Safety Precaution: Prepare the victim for any negative comments from the defendant/perpetrator and continue to accompany the victim when exiting the courthouse. Important to continuously engage in safety planning with the victim at each stage.

Court Appearance Tip: Be prepared to assist victim in preparing/delivering a victim impact statement.

F. Postadjudication and Corrections

As part of a sentence, the judge may impose time in jail as well as supervision of the defendant after they are released from jail. Alternatively, a judge may impose a period of supervision in lieu of jail. If probation was ordered, it is important that the victim be made aware of the terms and conditions of probation and any time an individual is released from jail. The right to notice may be a specific right included within a victim’s rights statute.

Corrections: Corrections commonly refers to jail, however there are also any number of community-based corrections programs including a reentry program, probation, and house arrest (typically monitored with an electronic monitoring device). Victim’s rights statutes may require that victims are informed of issues related to the defendant that could have implications for the victim’s safety as well as other issues such as victim’s compensation or restitution in a timely fashion.

Probation/Community Corrections: Probation refers to a period postadjudication in which the defendant is required to follow specific directives of the court such as finding employment, securing housing, abstaining from alcohol or substance abuse, refraining from further criminal activities, and possibly having no contact with a victim. Probation is generally ordered for a specific period and failure to meet the terms and conditions of probation may result in further sanctions by the court. Probationary terms may be supervised or unsupervised.
i. **Supervised**: Supervised probation refers to a probationary term that is fulfilled under the supervision of a probation officer. Supervised probation oftentimes requires regular contact with the probation officer whose job it is to track the progress or regress of a defendant in meeting the terms and conditions of the court. The probation officer reports directly to the tribal court.

ii. **Unsupervised**: Unsupervised probation refers to a probationary term that is fulfilled without the supervision of a probation officer. Unsupervised probation often requires the defendant to meet the terms and conditions of probation on their own volition and it is common that terms of probation are limited to refraining from further criminal activities, although no contact orders may also be included. If a violation of unsupervised probation occurs, it is usually brought forward by the tribal prosecutor when it is reported that the defendant has engaged in further criminal activity and/or violated a no-contact order if one is in place.

**Postsentencing**

**Advocacy action steps:**

- Be available to respond to ongoing victim needs and to inform victim about issues such as restraining order options, restitution, and civil litigation.
- Offer non-system-related services, which may include individual counseling, support groups, twenty-four-hour hotline access, and referrals to other community services.

- **Safety Precaution**: Check in with the victim regarding any safety needs or concerns. Plan accordingly.
- **Court Appearance Tip**: Accompany the victim to any postsentencing hearings. Safety plan accordingly.
Part 5: Additional Resources

Victim’s Rights

Federal Legislation

State Legislation (note source is from 2013)

Other Resources
**Protection Orders**

Protection orders may be known by a variety of names to include injunction, restraining order, civil restraining order, or victim protection order just to name a few. A protection order is a court-issued legal document that requires one person, the respondent (batterer), to stay away from the other person, the petitioner (victim).

- **Battered Women's Justice Project National Center on Protection Orders and Full Faith & Credit and the Tribal Law and Policy Institute**, Drafting an Enforceable Tribal Protection Order Involving a Non-member, September 2019.
- **Tribal Access Program, Office of the Chief Information Officer, Department of Justice.** Fact Sheet: Entering Orders of Protection into the National Crime Information Center V1, December 2020.

**State Victim Compensation Funds**

All states have a crime victim compensation program. These programs reimburse victims for expenses related to certain crimes, though the programs vary from state to state. Generally, such programs will pay for medical expenses, counseling costs, funeral or burial expenses, and lost wages or support.

Glossary of Legal Terms

*Tribal governments use a variety of legal terms within tribal laws. In criminal trials, various legal terms will be used in reference to specific legal actions, procedures, and documents. It is helpful for victim advocates to understand these commonly used legal terms. This glossary is adapted from [https://www.uscourts.gov/glossary](https://www.uscourts.gov/glossary)*

**Acquittal:** A verdict by a jury that a criminal defendant is not guilty, or the finding of a judge that the evidence is insufficient to support conviction.

**Admissible:** A term used to describe evidence that may be considered by a jury or judge in civil and criminal cases.

**Adversarial:** A legal system where advocates representing their parties case or position is presented before an impartial judge or jury.

**Affidavit:** A written or printed statement made under oath.

**Affirmed:** In the practice of a court of appeals, it means that the court of appeals has concluded that the lower court decision is correct and will stand as rendered by the lower court.

**Answer:** The formal written statement by a defendant in a civil case that responds to a complaint, articulating the grounds for defense.

**Appeal:** A request made after a trial by a party that has lost on one or more issues that a higher court review the decision to determine if it was correct. To make such a request is "to appeal" or "to take an appeal." One who appeals is called the "appellant"; the other party is the "appellee."

**Arraignment:** A proceeding in which a criminal defendant is brought into court, told of the charges in an indictment or information, and asked to plead guilty or not guilty.

**Bail:** The release, prior to trial, of a person accused of a crime, under specified conditions designed to assure that person’s appearance in court when required. Also, can refer to the amount of bond money posted as a financial condition of pretrial release.

**Bench trial:** A trial without a jury, in which the judge serves as the fact finder.

**Bond:** Refer to the amount of bond money posted as a financial condition of pretrial release.

**Burden of proof:** The duty to prove disputed facts. In civil cases, a plaintiff generally has the burden of proving his or her case. In criminal cases, the government has the burden of proving the defendant's guilt. (See standard of proof.)

**Case law:** The law as established in previous court decisions. A synonym for legal precedent. Akin to common law, which springs from tradition and judicial decisions.

**Cause of action:** A legal claim.
Civil order for protection (OFP): An order issued in a civil case to protect one or more people from another person. OFPs may include stayaway orders, no-contact orders, or peaceful contact orders and can only be modified by a judge.

Complaint: A document setting forth facts sufficient to allow a person to reasonably conclude that a crime was committed by the named defendant. Complaint often initiates a criminal adjudication.

Common law: The legal system that originated in England and is now in use in the United States, which relies on the articulation of legal principles in a historical succession of judicial decisions. Common law principles can be changed by legislation.

Concurrent sentence: Prison terms for two or more offenses to be served at the same time, rather than one after the other.

Consecutive sentence: Prison terms for two or more offenses to be served one after the other.

Conviction: A judgment of guilt against a criminal defendant.

Count: An allegation in an indictment or information, charging a defendant with a crime. An indictment or information may contain allegations that the defendant committed more than one crime. Each allegation is referred to as a count.

Criminal no-contact order: An order issued in a criminal case to protect someone from a defendant. Specifically, a no-contact order requires the defendant to stay away from and have no contact with the protected person. The expiration date is listed on the order. Orders can only be modified by a judge.

Defendant: An individual charged with a crime.

Discovery: Procedures used to obtain disclosure of evidence before trial.

Docket: A log containing the complete history of each case in the form of brief chronological entries summarizing the court proceedings.

Due process: In criminal law, the constitutional or ICRA guarantee that a defendant will receive a fair and impartial trial. In civil law, the legal rights of someone who confronts an adverse action threatening liberty or property.

Evidence: Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case in favor of one side or the other.

Exclusionary rule: Doctrine that says evidence obtained in violation of a criminal defendant's constitutional or statutory rights is not admissible at trial.

Exculpatory evidence: Evidence indicating that a defendant did not commit the crime.

Felony: A serious crime, usually punishable by at least one year in prison.
**Grand jury:** A body of citizens who listen to evidence of criminal allegations, which is presented by the prosecutors, and determine whether there is probable cause to believe an individual committed an offense.

**Habeas Corpus:** Latin, meaning "you have the body." A writ of habeas corpus generally is a judicial order forcing law enforcement authorities to produce a prisoner they are holding, and to justify the prisoner's continued confinement.

**Hearsay:** Evidence presented by a witness who did not see or hear the incident in question but heard about it from someone else. With some exceptions, hearsay generally is not admissible as evidence at trial.

**Impeachment:** The process of calling a witness's testimony into doubt.

**In camera:** Latin, meaning in “a judge's chambers.” Often means outside the presence of a jury and the public.

**Inculpatory:** Evidence indicating that a defendant did commit the crime.

**Indictment:** The formal charge issued by a grand jury stating that there is enough evidence that the defendant committed the crime to justify having a trial; it is used primarily for felonies.

**Jury trial:** The group of persons selected to hear the evidence in a trial and render a verdict on matters of fact.

**Misdemeanor:** An offense punishable by one year of imprisonment or less.

**Mistrial:** An invalid trial caused by fundamental error. When a mistrial is declared, the trial must start again with the selection of a new jury.

**Motion:** A request by a litigant to a judge for a decision on an issue relating to the case.

**Motion in limine:** A pretrial motion requesting the court to prohibit the other side from presenting, or even referring to, evidence on matters said to be so highly prejudicial that no steps taken by the judge can prevent the jury from being unduly influenced.

**Nolo contendere/no contest:** A plea of nolo contendere has the same effect as a plea of guilty, as far as the criminal sentence is concerned, but may not be considered as an admission of guilt for any other purpose.

**Objection:** A formal protest made by a litigant during trial made with respect to a procedure or made the intention of requesting that evidence or testimony not be allowed into the record.

**Parole:** The release of a prison inmate after the inmate has completed part of his or her sentence in a prison. When the parolee is released to the community, he or she is placed under the supervision of a probation officer.
**Peremptory challenge:** A district court may grant each side in a civil or criminal trial the right to exclude a certain number of prospective jurors without cause or giving a reason.

**Petty offense:** A federal misdemeanor punishable by six months or less in prison.

**Plaintiff:** A person or business that files a formal complaint with the court.

**Plea agreement:** Agreement made between the prosecutor and the criminal defendant that usually involves pleading guilty to a lesser offense for a lighter sentence. The three basic pleas in a criminal case include guilty, not guilty, or nolo contendere. Plea agreements may be subject to withdrawal prior to the judge accepting the plea.

**Precedent:** A court decision in an earlier case with facts and legal issues similar to a dispute currently before a court.

**Pretrial:** A legal proceeding held before a trial intended to address issues of law or to stipulate to certain matters that the parties can agree upon.

**Pro se:** Representing oneself. Serving as one's own lawyer.

**Probation:** Sentencing option in courts. With probation, instead of sending an individual to prison, the court releases the person to the community and orders him or her to complete a period of supervision monitored by a probation officer and to abide by certain conditions.

**Procedure:** The rules for conducting a lawsuit; there are rules of criminal procedure.

**Record:** A written account of the proceedings in a case, including all pleadings, evidence, and exhibits submitted in the course of the case.

**Restitution:** Full or partial compensation for loss paid by a criminal to a victim that is ordered as part of a criminal sentence or as a condition of probation.

**Sanction:** A penalty or other type of enforcement used to bring about compliance with the law or with rules and regulations.

**Sentence:** The punishment ordered by a court for a defendant convicted of a crime.

**Sequester:** To separate. Sometimes juries are sequestered from outside influences during their deliberations.

**Standard of proof:** Degree of proof required. In criminal cases, prosecutors must prove a defendant's guilt "beyond a reasonable doubt."

**Statute:** A law passed by a legislature.

**Statute of limitations:** The time within which a lawsuit must be filed or a criminal prosecution started.
**Subpoena:** A command, issued under a court's authority, to a witness to appear and give testimony.

**Subpoena duces tecum:** A command to a witness to appear and produce documents.

**Testimony:** Evidence presented orally by witnesses during trials or before grand juries.

**Toll:** To stop the running of a time period, especially a time period set by statute.

**Venue:** The geographic area in which a court has jurisdiction. A change of venue is a change or transfer of a case from one judicial district to another.

**Victim:** As used in this publication refers to a victim of a crime.

**Victim centered:** An approach that allows the victim’s wishes, safety, and well-being to take priority in all matters and procedures before the court. A victim-centered approach is grounded in the philosophy that the services offered to the victim are complimentary not mandatory and the victim is the decision maker regarding the services needed and accepted.

**Voir dire:** Jury-selection process of questioning prospective jurors to ascertain their qualifications and determine any basis for challenge.

**Warrant:** Court authorization, most often for law enforcement officers, to conduct a search or make an arrest.

**Witness:** A person called upon by either side in a lawsuit to give testimony before the court or jury.

**Witness sequestration:** When the judge, at the request of the prosecution or defense, asks witness(es) to exit the courtroom to avoid hearing other witness’s testimony.

**Writ:** A written court order directing a person to take, or refrain from taking, a certain act.
Advocate’s Tribal Protection Order Checklist
(For Cross-Jurisdictional Enforcement)

Congress has clarified that properly executed tribal protection orders are valid against any person, including non-Indians. And, because such tribal protection orders must receive full faith and credit, it is crucial that they are properly written to be enforceable in other jurisdictions for the safety of victims protected by the order. In addition to the usual elements of a tribal protection order, to ensure enforceability across jurisdictions, advocates should be very careful to make sure—by working with the presiding judge, court clerk, or prosecutor—that the following is also included in their client’s tribal protection order:

1. The tribal court has clearly stated their civil jurisdiction with the language such as
   a. “This court has jurisdiction over this matter under the law of the Indian tribe” pursuant to (insert the tribal code statute number that allows the tribal court to issue protection orders). (Insert the name of your tribe for the words Indian tribe.)

   AND

   b. “This court has jurisdiction over the parties (and then explain how with specific facts, such as: because the acts of domestic violence occurred on the Reservation; because the Respondent resides on the Reservation; because the Respondent is a member of the Nation or of another Nation; because the Petitioner is a member of the Nation or resides on the Reservation; because the Petitioner is a member of another Nation but resides on your Reservation; because the Petitioner lives in Tribal housing, is the intimate partner of a Tribal member or has children who are members of the Nation;)

   AND

   c. “Reasonable notice and opportunity to be heard has been given to the person against whom the order is sought sufficient to protect that person’s right to due process.”

   d. Jurisdiction is also proper under 25 U.S.C. 2265.

2. The issuing tribal court has asserted (in the protection order form) that
   a. The matter has arisen on Indian (the Native nation’s) land
   OR

   b. The matter is within the authority of the Indian tribe.

3. The protection order (or attached documentation) demonstrates that the defendant was served with notice.

4. The protection order (or attached documentation) demonstrates that the defendant had an opportunity to be heard or will have an opportunity within the time required by Nation’s laws that will protect respondent’s due process rights (a court date and time).

5. The issuing tribal court includes “full faith and credit” language in clear compliance with VAWA 18 U.S.C. 2265(b).

The checklist may increase the probability of enforcement in outside jurisdictions. Visit www.TribalProtectionOrder.org for more information and resources related to tribal protection orders.