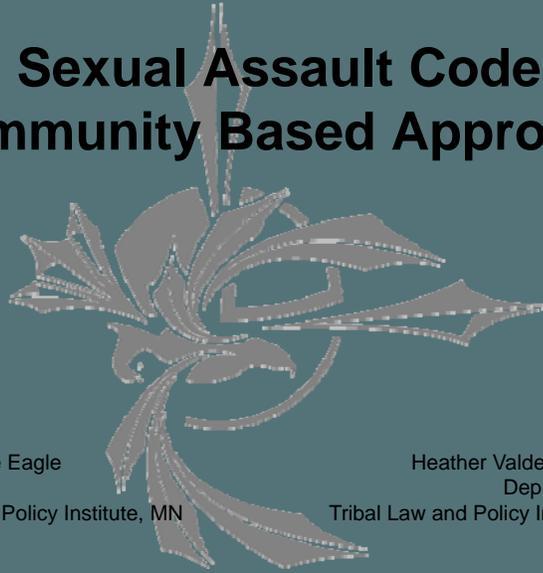


Tribal Sexual Assault Codes: A Community Based Approach



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Objectives of Presentation

- Encourage Tribes to review/revise and enforce sexual assault criminal statutes
- Understand the importance of community based code development
- Familiarize Tribes with Tribal Law and Policy Institute's resources and tools available to assist in revising or developing sexual assault criminal statutes.

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Sexual Assault: Statistics

- More than 1 in 3 American Indian/Alaska Native women will be raped during their lifetime
- 7.2 per 1,000 persons, compared to 1.9 per 1,000 persons for all races
- Sexual violence is one of the most under reported crimes

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Sexual Assault: Current Response

- Need to prosecute these crimes is great
- Federal/state response has not been adequate
- Too many perpetrators are not held accountable

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Tribal Sexual Assault Codes

- Few tribal sexual assault codes exist
- Misconception that tribal communities do not have resources to draft their own code
 - Adoption of state codes, or the adoption of other tribal codes
 - Codes that are not relevant to the community's history, culture, tradition or geography
 - No buy in from the community

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Adopted Codes

- Largely copied from state laws of the pre-1970s era
- Often defines sexual assault very narrowly
- Gender-specific – does not allow for male victims
- Often exempt spousal rape (not a crime)
- Limits punishments / sanctions to 1 year / \$5,000 fine or both (often lower sentences)

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Why adopted codes? Myths . . .

- Tribal laws should be written by attorneys
- Most tribes/villages do not have anyone in the community who can write laws
- The best way to adopt a law for a tribe is to copy a “model” code

Facts

- The best tribal laws often originally drafted by community members
- Many community members are capable of writing codes if given some basic guidance
- Lawyers can be helpful in refining or strengthening codes
- “Model codes” often do not address the unique needs and resources of your own community

Tribal Law and Policy Institute Code Development Philosophy

- Laws should come from the community
- Attorneys do not have all the answers
- Providing tools and examples from other tribes in a “workbook” format will facilitate the use of community resources

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Resource Guide

- Designed to provide an **outline** of issues that should be considered when drafting a code or updating an existing code.
- Designed to be inclusive of a community’s values.
- Includes sample language from existing tribal codes.

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Table of Contents: Sexual Assault Code Workbook

- Introduction
- Jurisdiction
- Criminal Sexual Assault Statute
- Stalking Statute
- Sex Offender Registry and Notification
- Glossary

Chapter: Drafting Sexual Assault Statute

- A. Facts about rapists
- B. Reviewing federal law
- C. Common problems with tribal sexual assault statutes
- D. Key considerations for an effective sexual assault statute
- E. Evidence
- F. Putting it all together

Sections: Sexual Assault Code Workbook

- Overview
- Tribal Code Examples
- Tribal Code Commentary
- Exercises
- Additional Resources

Beginning the Process

- Tribal Constitution
- Current Tribal laws
- Tradition, customs, stories
- Relevant federal and/or state laws
- Copies of any case law
- Resource Guide

Decide on Objectives

- Sexual Assault Criminal Statute
- Rules of Evidence
- Stalking Statute
- Sex Offender Registration
- Other?

Steps in the Process

1. Get the “right” people together
2. Review current law
 - a. Identify problems and issues with current law
 - b. Identify strengths of current law
3. Review your Tribe’s culture & traditions
4. Review what other tribes have done
5. Decide on what will work for you community

Step 1. Get the Right People Together

- Survivors
- Advocates
- Tribal Prosecutors
- Tribal Court personnel
- Tribal Law enforcement
- Tribal Leaders
- Elders
- Family Services
- Medical personnel
- Probation/Parole
- Corrections
- Defense attorneys
- Food bank
- Traditional healers
- Churches
- Child Protective Services
- Housing Authority
- School System
- Youth Council
- Legal Aid

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Working as a Team

- Group of “problem solvers”
- Equal representation from various agencies
- Completed in atmosphere of mutual respect
- Willing to explore new ways of improving laws
- Willing to be creative and persistent
- Willing to share the burden
- All agencies allowed input into draft codes

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Step 2. Review Current Law

- Concurrent Jurisdiction
- Review of Federal Sexual Abuse Statute in Resource Guide
- Tribal Law

Step 2a: Review Current Law for Issues

- Marital Immunity
 - “It shall be unlawful to intentionally, wrongfully and without consent subject another, **not his/her spouse**, to any sexual contact.”
 - “The provisions related to sexual offenses **shall not apply to conduct between married persons**”

Review Current Law for Issues

- Corroboration Requirement
 - Whenever appropriate in any prosecution before a jury regarding a sexual offense in this Code, the jury shall be instructed to evaluate the testimony of a victim or complaining witness with special care in view of the emotional involvement of the witness and the difficulty of determining the truth with respect to alleged sexual activities carried out in private, when such are not otherwise corroborated.

Review Current Law for Issues

- Prompt Complaint
 - No prosecution may be instituted or maintained for rape, deviate sexual contact or sexual assault unless the alleged offense was brought to the notice of the Tribal Police Department or other law enforcement official or agency **within thirty (30) days after its occurrence**, except when the alleged victim is less than sixteen (16) years of age or otherwise incompetent to make complaint at the expiration of the thirty (30) day period

Review Current Law for Issues

- High Threshold of Proof
 - (1) A person commits the offense of sexual assault knowingly making sexual contact with another without consent.
 - (2) “Without consent”, as used in this section means:
 - (a) the victim is **compelled to submit by force** against himself, herself or another, or.
 - (b) As used in subsection (2)(a), the term “**force**” means;
The infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender.

Review of Common Evidence Issues

- Rape Shield Law – when previous sexual activity of the victim is admissible at trial
- Prior Bad Acts of Defendant
- Confidentiality of Sexual Assault Victims

Rape Shield Law

- Does your Tribe use the Federal Rules of Evidence in the Tribal Court? If so, is the rape shield provision adequate or do you want to include a provision in your sexual assault statute?
- What are the pros and cons of having a rape shield provision in your law?
- Are there certain situations where you believe the victim's sexual behavior should be admissible? If so, describe those situations.
- Decide on the key points you want in your Tribe's rape shield provision.

Step 2b: Identify Strengths of Current Law

- What is working well?
- No need to revise it all?

Step 3: Review Culture and Tradition

- You've got the "right" people for the discussion
- The Resource Guide provides sample questions which should help in this discussion

Step 4: Review Other Tribes Laws

- Examples provided in the Resource Guide
- Commentary on examples help understanding their key strengths and weaknesses
- Example provide options

Step 5: Decide What You Want to Do in Your Community

- Resource Guide developed to encourage discussion
- Purpose of the process is to help guide you to a decision as to what will work in your community.

Result

A statute which effectively addresses sexual assault in YOUR community.

In Development at TLPI

- Sexual Assault Tribal Code Workbook
- Domestic Violence Tribal Code Workbook
- Children's Tribal Code Workbook
 - Criminal
 - Civil
- Tribal Sexual Assault Law Enforcement Protocol Workbook
- Cultural Traditions Resource and Video

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For More Information . . .

TLPI believes in providing resources free of charge, or at minimal cost, whenever possible.

Visit www.tlpi.org

Or call:

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Or:

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651-644-1125

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