



Research. Educate. Lead.

DISCLOSURES

The planners, presenters, and content reviewers of this course disclose no conflict of interest relative to this educational activity.

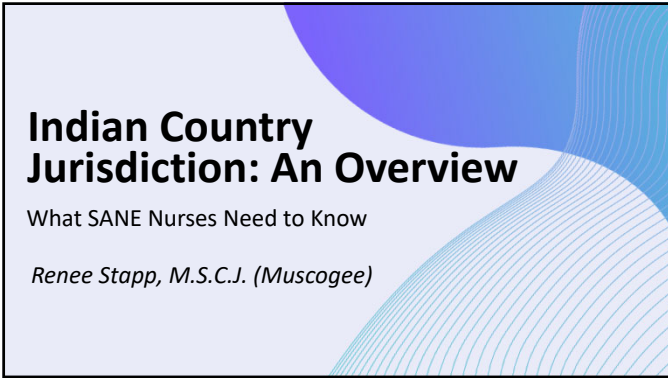
Upon attending this course in its entirety (due to the criticality of the content) and completing the course evaluation, you will receive the specified number of continuing nursing education contact hours for this activity.

IAFN is accredited as a provider of nursing continuing professional development by the American Nurses Credentialing Center's Commission on Accreditation.

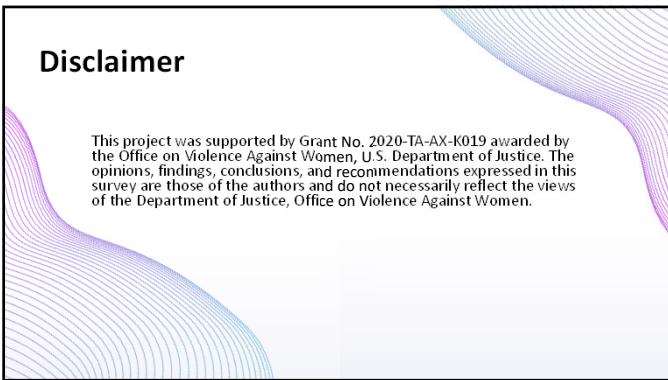
FASTta

Sexual Assault Forensic-Medical and
Advocacy Services for Tribes

The FASTta project was supported by Grant No.2020-TA-AX-K027 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this Web Site are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.



**Indian Country
Jurisdiction: An Overview**
What SANE Nurses Need to Know
Renee Stapp, M.S.C.J. (Muscogee)



Disclaimer

This project was supported by Grant No. 2020-TA-AX-K019 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this survey are those of the authors and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.



Land Acknowledgment

The National Center for Victims of Crime



National advocacy organization created in 1985 that provides:

- Training and Technical Assistance
- Resource Connection
- Hotline Support for Victims and Survivors
- Attorney Referral Services and Training through the National Crime Victim Bar Association

Victim Assistance to Support Tribes



Native-led Center that provides:

- Customized Trainings on responding to AI/AN victims of Domestic Violence, Sexual Assault, Stalking, and Human Trafficking
- One-on-One Individualized Technical Assistance
- Resource Connection for Native Victims and Advocates through the Tribal Resource Tool

Presenter: Renee Stapp



Director, Victim Assistance to Support Tribes

- Citizen of the Muscogee Nation
- BIA Agent- Great Plains Region
- Tribal Police Officer
- Indigent Defense
- Advocate with over 20 years of experience in victim services

Acronyms

- VAST: Victim Assistance to Support Tribes
- NCVC: National Center for Victims of Crime
- C.J: Criminal Jurisdiction
- I.C: Indian Country
- L.E: Law Enforcement- Local, State, Tribal and Federal officers

Presentation Learning Objectives

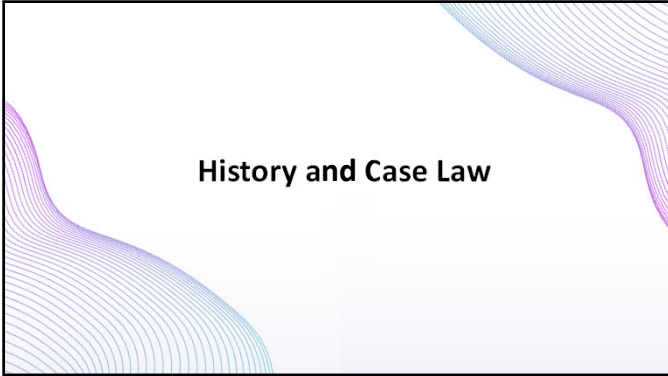
1. Gain a basic understanding of Indian Country Criminal Jurisdiction
2. Understand the historical legacy of key legal decisions concerning jurisdiction in Indian Country
3. Identify resources to support SANE response to sexual violence in Indian Country

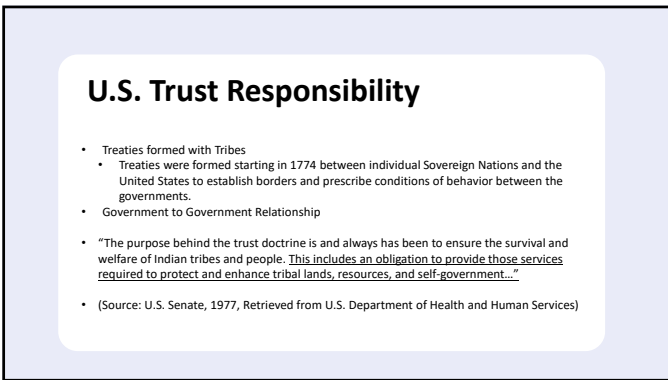
Before We Start....

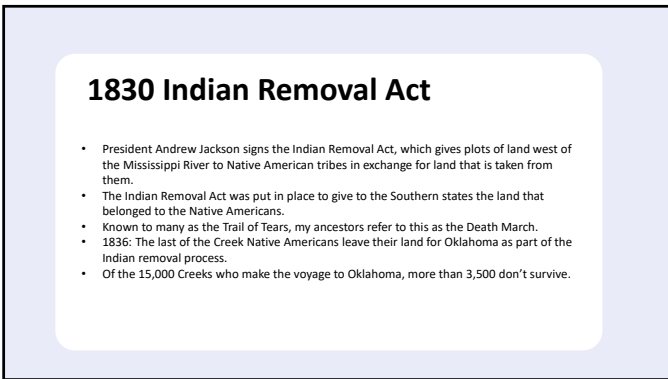
There are 574 Federally Recognized Tribes

- 229 are in Alaska
- Each Tribe, Pueblo, Rancharia, Village is different and unique
- Each have their own history, their own needs, strengths, their own cultures, practices, identity
- ***Tribes are Sovereign Nations***, each with their own land base, treaties with the Federal Government and agency over their peoples

You Can't Cookie Cut Indian Country







1851 Indian Appropriations Act

- Congress passes the Indian Appropriations Act, creating the Indian reservation system.
- Native Americans aren't allowed to leave their reservations without permission.
- This allocated funds to move/relocate Tribes onto Reservations where they would be "protected" by the U.S. Government.
- 1879: the first students attend Carlisle Indian Industrial School in Pennsylvania, the country's first off-reservation boarding school.
- The school, created by Civil War veteran Richard Henry Pratt, is designed to assimilate Native American students.
- 1887: President Grover Cleveland signs the **Dawes Act**, giving the president the authority to divide up land allotted to Native Americans in reservations to individuals.

Indian Citizenship Act

- June 2, 1924: U.S. Congress passes the Indian Citizenship Act, granting citizenship to all Native Americans born in the territorial limits of the country.
- Previously, citizenship had been limited, depending on what percentage Native American ancestry a person had, whether they were veterans, or, if they were women, whether they were married to a U.S. citizen.
 - Native Americans were only able to win the right to vote by fighting for it state by state.
 - The last state to fully guarantee voting rights for Native people was Utah in 1962.
- April 11, 1968: **The Indian Civil Rights Act** is signed into law by President Lyndon B. Johnson, granting Native American tribes many of the benefits included in the Bill of Rights.

Boarding Schools

- "Kill the Indian, Save the Man" General Richard Henry Pratt in his speech of philosophy of assimilation.
- Stated policy of the U.S.
- Use of boarding schools as cultural genocide
- Indian children were removed from their homes and placed in boarding schools
 - High rates of sexual violence, child abuse

367 boarding schools operated in 29 states.

(Source: National Native American Boarding School Coalition)

Ex Parte Crow Dog

- 1881 Crow Dog kills Chief Spotted Tail on the Rosebud Reservation
- Tribal sentencing was not "adequate"
 - A grand jury was convened and he was tried and convicted in Dakota Territory, White officials dismissed the killing as a quarrel over a woman.
- **The Major Crimes Act** was passed
- Places 15 major crimes under federal jurisdiction if they occur on Native lands, even if both perpetrator and victim are Native American, beginning a legal doctrine limiting tribal sovereignty.

Major Crimes Act U.S.

- Murder
- Manslaughter
- Kidnapping
- Maiming
- A felony under chapter 109A (i.e. sexual abuse)
- Incest
- A felony assault under section 113 (e.g. assault with intent to commit murder or assault with a dangerous weapon)
- An assault against an individual who has not attained the age of 16 years
- Felony child abuse or neglect,
- Arson
- Burglary
- Robbery, and;
- A felony under section 661 of this title (i. e. larceny)

Iron Crow v. Oglala Sioux Tribe

- 1955 US District Court for the District of South Dakota
- Question at the Center of the Case:
 - *Does the Oglala Sioux Tribal Court have jurisdiction to try, convict and punish enrolled members of the Oglala Sioux Tribe for the crimes of adultery and tax assessment committed on Pine Ridge Reservation?*
- IMPACT of this Case

Oliphant v. Suquamish Tribe

- 1978 Supreme Court Case
- Question at the Center of the Case:
 - *Do Tribal Courts have criminal jurisdiction to try and to punish non-Indians?*
 - United States Supreme Court case deciding that Indian tribal courts have no criminal jurisdiction over non-Indians.
 - The case was decided on March 6, 1978 with a 6–2 majority.
- IMPACT of this Case
 - Safe haven for non-Indian offenders

What Indian Country Is and Is Not

What is Indian Country?

- Defined by 18 USC § 1151 as:
 - Within the limits of any Indian Reservation under the jurisdiction of the U.S. Government, included patented lands and rights-of-way (18 USC § 1151 (b));
 - Dependent Indian Communities (18 USC § 1151 (b))
 - All land allotments, the Indian title to which have not been extinguished, including rights of way (18 USC § 1151 9c)

What is Criminal Jurisdiction?

- Criminal Jurisdiction is the “power of a court to adjudicate cases and issue orders” (Cornell Law School, Legal Information Institute).
- One reservation or area of Tribal lands can encompass more than one state or several counties.

To have jurisdiction on Tribal lands, the law enforcement agency must establish that the crime or the nexus to the crime occurred within the boundaries of the Tribal lands.

Who Can Exercise Jurisdiction?

STATE

TRIBE

FEDERAL

Jurisdiction Chart

INDIAN COUNTRY CRIMINAL JURISDICTIONAL CHART
(1) Federal jurisdiction extends to Indian Country, as defined by 18 U.S.C. § 1151. (2) Tribal jurisdiction extends to Indian Country, as defined by 18 U.S.C. § 1151. (3) State jurisdiction extends to Indian Country, as defined by 18 U.S.C. § 1151. (4) Tribal jurisdiction extends to Indian Country, as defined by 18 U.S.C. § 1151. (5) Federal jurisdiction extends to Indian Country, as defined by 18 U.S.C. § 1151.

TYPE OF THE OFFENSE	WHAT WAS THE CRIME?	JURISDICTION
INDIAN	Major Crimes Act crimes: Murder, nonnegotiable kidnapping, extortion, sexual abuse to child under 18 (18 U.S.C. § 2242), 25 USC with intent to commit murder or its substitute of 18 U.S.C. § 2242(a)(1)-(3), sexual abuse to child under 18 (18 U.S.C. § 2242(a)(4)), receiving in substantial bodily injury of a spouse, intimate partner or dating partner as such as a person under 18 (18 U.S.C. § 2242(a)(5)), sexual abuse to child under 18 (18 U.S.C. § 2242(a)(6)), sexual abuse to child under 18 (18 U.S.C. § 2242(a)(7)), (Authority: Major Crimes Act, 18 U.S.C. §§ 1153 and 1154.)	FEDERAL
	All remaining crimes contained in tribal code. (Authority: 25 USC § 11, if a CPE Court of Indian Offenses)	TRIBAL *
NON-INDIAN	Major Crimes Act crimes: Murder, nonnegotiable kidnapping, extortion, sexual abuse to child under 18 (18 U.S.C. § 2242), 25 USC with intent to commit murder or its substitute of 18 U.S.C. § 2242(a)(1)-(3), sexual abuse to child under 18 (18 U.S.C. § 2242(a)(4)), receiving in substantial bodily injury of a spouse, intimate partner or dating partner as such as a person under 18 (18 U.S.C. § 2242(a)(5)), sexual abuse to child under 18 (18 U.S.C. § 2242(a)(6)), sexual abuse to child under 18 (18 U.S.C. § 2242(a)(7)), (Authority: Major Crimes Act, 18 U.S.C. §§ 1153 and 1154.)	FEDERAL
	Other federal crimes (unless the tribe has punished the full-on defendant), including crimes contained in state code (unless there is no federal statute for the category of offense) under the Assimilative Crimes Act. (Authority: Assimilative Crimes Act, 18 U.S.C. §§ 1152 and 1153.)	FEDERAL
	All remaining crimes contained in tribal code. (Authority: 25 USC § 11, if a CPE Court of Indian Offenses)	TRIBAL *
2. VICTIMLESS CRIMES: NO VICTIM'S PERSON OR PROPERTY INVOLVED IN CRIME		
	a. Crimes in state code (unless there is no federal statute for the category of offense) under the Assimilative Crimes Act. (Authority: 18 U.S.C. §§ 1152 and 1153.)	FEDERAL
	b. Crimes in tribal code. (Authority: tribal code or 25 CFR Pt. 11, if CPE Court.)	TRIBAL *
<small>* SUBJECT TO THE "LIMITS OF POWER" PROVISIONS OF FEDERAL LAW OR OTHER ACTS OF CONGRESS.</small>		
3. GENERAL FEDERAL CRIMES: OTHER FEDERAL CRIMES OF GENERAL APPLICATION		
	(Federal prosecution is not on federal land, but based on territorial jurisdiction over location of crime) (e.g., drug offenses, firearm offenses, mail fraud, kidnapping or theft from retail organizations, theft from a train, failure to report child abuse, etc.) (Authority: individual federal statute)	FEDERAL

Violence Against Women Act (VAWA)

1994—VAWA included a 4% dedicated funding stream of the available funding for American Indians and Alaska Natives tribes with a statutory purpose of “developing, enlarging, or strengthening programs addressing the needs and circumstances of Indian tribes in dealing with violent crimes, including sexual assault and domestic violence, against women.”

2000—VAWA increased the tribal dedicated funding stream to 10%, provided increased clarity regarding tribal court protection orders and enforcement, and created a tribal coalition grant program.

2005—VAWA included a Safety for Indian Women Title, recognizing the unique legal relationship of the United States to Indian tribes and women. Congress explicitly provided that the title was “to strengthen the capacity of Indian tribes to exercise their sovereign authority to respond to violent crimes committed against women.” It authorized the creation of a single VAWA tribal grant program, creation of a tribal unit and Deputy Director for Tribal Affairs, and mandated annual tribal- federal VAWA consultations. VAWA 2005 also added dating violence as a new purpose area.

VAWA (Continued)

2013—VAWA included an historic amendment affirming inherent tribal authority over non-Indians committing certain acts of domestic violence or dating violence or violation of certain protection orders in the Indian country of the tribe, provided increased funding for the tribal coalitions program, and recognized sex trafficking as a new purpose area under the tribal grants program.

2022 - VAWA included an historic amendment affirming inherent tribal authority over non-Indians committing certain acts of domestic violence or dating violence or violation of certain protection orders in the Indian country of the tribe, provided increased funding for the tribal coalitions program, and recognized sex trafficking as a new purpose area under the tribal grants program.

Indian Country Criminal Jurisdiction in Practice

SANE Nurses

- Your role as a medical professional, but also as an advocate
 - Collaboration is key
 - Know your teammates
- Some cards to play to navigate through situations
 - Educate yourself to the role you play
 - Do you work with State, Tribal, Federal
- If you work with AI/AN victims/survivors, do you partner with IHS or Tribal medical facilities?
- Do you testify in court?
 - Are you prepared to do so?

Victims Rights Refresher

- Victims have the right to:
- Be treated with fairness
 - Notice
 - Be present
 - Be informed of proceedings
 - Protection from intimidation and harassment
 - Privacy
 - The expeditious return of personal property seized as evidence
 - A speedy trial
 - Enforcement of their rights
 - Apply for crime victim compensation
 - Restitution

Protecting and Upholding Victims Rights

- Many Tribal courts have victims' rights that are mandated for LE to provide referral services
 - Many Tribes have Victims Rights within their constitution
- Federal Victims Rights
 - Victims Rights and Restitution Act (VRA)
 - Crime Victims Rights Act (CVRA)
- State Victims' Rights
 - Each state varies

Working with Law Enforcement

- Collaborating with LE to understand the jurisdiction your victim may access
 - Federal, State, Tribal
- Even if the jurisdiction is state, an AI/AN victim may benefit from Tribal resources.
- Navigating through several systems, at the same time, with the same case
- Ensure your LE understand being Trauma Informed SANE practitioners

Case Scenario

Recent Supreme Court Interpretations

McGirt v. Oklahoma (2020)

- McGirt an enrolled Seminole charged with child sexual assault, petitioned the state had no jurisdiction to prosecute
- State prosecution of two 500 year sentences plus LWOP
- Federal prosecution sentenced to THREE LIFE SENTENCES IN FEDERAL COURT
- “On the far end of the Trail of Tears was a promise. Forced to leave their ancestral lands in Georgia and Alabama, the Creek Nation received assurances that their new lands in the West would be secure forever.”
- “The government further promised that “[no] State or Territory [shall] ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves.” 1832 Treaty, Art. XIV, 7 Stat. 368.”

Castro-Huerta v. Oklahoma (2022)

- Castro limited the McGirt ruling, introducing “concurrent jurisdiction,” giving the State of Oklahoma more power.
- “Now, at the bidding of Oklahoma’s executive branch, this Court unravels those lower-court decisions, defies Congress’s statutes requiring tribal consent, offers its own consent in place of the Tribe’s, and allows Oklahoma to intrude on a feature of tribal sovereignty recognized since the founding.”
- “One can only hope the political branches and future courts will do their duty to honor this Nation’s promises even as we have failed today to do our own.”

Resources for Victims and Survivors

Resources

Access Resources for Victims and Survivors:

The Tribal Resource Tool is an online map of diverse resources for American Indian and Alaskan Native (AI/AN) victims and survivors of crime and abuse. www.tribalresourcetool.org

Learn More:

VAST recently put on a webinar about Criminal Jurisdiction in Indian Country as part of our Power Hour Series with Casey Ross, an expert on this topic. You can watch the first webinar here: www.youtube.com/watch?v=WZyldiYg-Rw

Tribal Coalitions

There are 21 Tribal Coalitions

Tribal Coalitions are technical assistance & subject matter experts that play a hugely important role in supporting local programs and have key relationships and expertise across their geographic area.

Access information about Tribal Coalitions

Visit the Tribal Resource Tool Tribal Coalitions web-page for contact information. www.tribalresourcetool.org/resources/tribal-coalitions/

Contact VAST

Renee Stapp, *Director*
rstapp@victimsofcrime.org

Marianna Wells, *Assistant*
mwells@victimsofcrime.org

Visit our website: <https://victimsofcrime.org/vast-tta/>

Join our FB Group: www.facebook.com/groups/ncvcvast