

Enhancing Responses: Child Custody and Domestic Violence

Considerations for Tribal Courts

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Considerations for Tribal Courts

This resource guide¹ offers recommendations and considerations for developing code language, court practices and procedures, and system reforms to enhance responses to child custody/parenting time cases involving domestic abuse. Each Tribal nation is the best judge of the responses and legal code most appropriate and meaningful for its community. As each community has unique cultural customs and practices, this tool provides broad guidance to be tailored by each community.

Tribal Nations in the U.S. have distinct histories, cultures, languages, and traditional governance systems and are sovereign nations whose right to self-government is acknowledged through numerous treaties.² The sovereign Nations adopt Tribal codes and establish specific Tribal court systems. The following guidance focuses on strategies for improving responses to child custody/parenting cases involving domestic abuse in Tribal courts and with members of Tribal nations and communities.

Children deserve to grow up free from domestic abuse in their homes. The goal of the strategies herein is to promote the well-being of children through support for their specific mental, spiritual, physical, emotional, and psychological health and provide for continued connections and opportunities to know their Tribe's culture, language, history, beliefs, traditions, values, and who is part of their kinship system.

Courts may support a child's connection to their Tribal community through court orders that offer financial assistance, resources, and time to engage with family, peers, community, and service providers, offering positive pathways to safety, healing, and support.

¹ The materials herein are for educational purposes and do not constitute legal advice. Participants should consult their jurisdiction's codes, case law, court rules, and canons/ethics rules for applicable requirements.

The following guidance includes information reproduced and adapted with permission from the National Council of Juvenile and Family Court Judges, *Revised Chapter Four: Families and Children of the Model Code on Domestic and Family Violence* (2022).

² *Tribal Nations and the United States*, Nat'l Cong. of Am. Indians (2015).

Guiding Principles and Core Values

The following section reflects a values-driven approach to responses to domestic abuse. Courts are encouraged to consider these principles and values throughout their court systems.

Guiding Principle 1. Safety

The safety and well-being of children and parents include freedom from abuse in all of its forms: physical, sexual, and coercive control. The physical, spiritual, and psychological well-being of children and parents requires protection from the short- and long-term effects of abuse and trauma with a focus on their needs as identified by them within the context of their community and family.³

Guiding Principle 2. Healing

Healing focuses on an understanding of trauma, including historical trauma, experienced by the family. Partnerships with the family and community are essential to promoting individual, intergenerational, family, and community healing. Services, approaches, and interventions for families should be drawn upon the communities' Indigenous knowledge, values, traditions, customs, and practices for post-traumatic growth and healing. Restorative practices that are trauma-informed and prioritize the safety of survivors and children may offer another opportunity to promote wellness for the family.

Guiding Principle 3. Respect and Recognition

Courts, practitioners, service providers, and others interacting with survivors and children from Tribal nations should recognize and respect the fundamental role customs and kinship play in providing support, healing, and safety to the family. Protective parenting behaviors within the context of experiencing domestic abuse should be recognized as attempts by survivor parents to mitigate the effects of abuse on children.

³ See Family Court Enhancement Project (FCEP) (last visited Jan. 23, 2025).

Guiding Principle 4. Collaboration and Connection

Courts work best in partnership with communities and stakeholders to ensure coordination and information sharing as appropriate and ethical to enhance case outcomes. Connections to positive family and community members should be bolstered, and culturally specific programming should be integrated into court orders to enhance outcomes for children.

Guiding Principle 5. Tailored Responses for Families

“Contextualization is important for understanding and interpreting the role of family systems in [Native American] NA communities today and how they impact experiences of [intimate partner violence IPV]”.⁴

Understanding the full context of each situation presented to the court results in better decision-making, reduces information gaps to prevent decisions based on assumptions and bias, and helps prevent revictimization. Listening to communities and families plays a key role in determining context and recognizing the priorities for safety and relief as defined by the survivor and their children. These individualized assessments within the context of the family’s relationship with the community can result in tailored, meaningful approaches rooted in cultural values.

Terminology as used in this document is defined as follows:

Accountability: Strategies that support compliance with court orders and promote pathways for change by the abusive parent while prioritizing the safety and well-being of the abused parent and children.

Advocacy/Advocate: Those with experience and training working with survivors/victims of domestic abuse with connections to the Tribal Nation that offer safety planning, access to services, information, and assistance in navigating systems.

⁴ Brittany Wenniser:iostha Jock et al., “We’ve Already Endured the Trauma, Who is Going to Either End that Cycle or Continue to Feed It?”: The Influence of Family and Legal Systems on Native Women’s Intimate Partner Violence Experiences, 37 J. of Interpersonal Violence, NP20602-NP20629 (2022).

Abusive Partner Intervention Program (APIP): Programs with expertise and training in providing intervention within a cultural context for persons who are abusive to their intimate partners.

Best Interest of the Child: A concept often codified in code or case law outlining factors courts should consider to promote the safety and well-being (physical, mental, spiritual, emotional) of children.

Coercive Controlling Abuse: A pattern of conduct that has the purpose or effect of substantially restricting the other parent's safety or autonomy through intimidation, implicit or explicit threats, or by compelling compliance.⁵

Coordinated Community Response (CCR): The concept of a coordinated community response (CCR) involves convening a group of stakeholders to improve system responses. This group may be called various names, but the point is to involve professionals, organizations, Elders, advocates, community members, and individuals who can help explore ways to resolve issues, improve coordination, create or expand available services, and reduce barriers within the justice system.

Domestic Abuse: Forms of abuse include physical violence, stalking, sexual abuse, health-related abuse, coercive controlling abuse, technological abuse, financial abuse, and human trafficking.⁶

Intimate Partner Violence (IPV) is abuse that occurs in a romantic relationship. Intimate partner refers to both current and former spouses and dating partners.⁷

For purposes of this document, domestic abuse is the primary term used to describe forms of abuse used by a parent against the other parent.

⁵ Nat'l Council of Juv. & Fam. Ct. Judges, *Revised Chapter Four: Families and Children of the Model Code on Domestic and Family Violence*, Sec. 401(4)(a) (2022).

⁶ Nat'l Council of Juv. & Fam. Ct. Judges, *Revised Chapter Four: Families and Children of the Model Code on Domestic and Family Violence*, Sec. 401(1)(a-h) (2022).

⁷ Answer to "What Types of Intimate Partner Violence Does the NISVS Measure?" *Nat'l Intimate Partner and Sexual Violence Survey Frequently Asked Questions*, Ctr. Disease Control & Prevention (May 16, 2024).

Evidence-based practices: Culturally grounded practices recognized by the specific Tribal nation as meaningful, effective, and relevant for Indigenous people.

Family: Persons identified as part of a kinship unit based on history of connections and relationships.

Kinship – Relationships as defined by the Tribal members to be recognized and honored for the role they play in a child's life.

Parenting Plans, Custody, Visitation: Court-ordered provisions related to parental and family members' access to children.

Safety: Persons with autonomy and without fear associated with their physical, emotional, and spiritual health and well-being.

Safety Planning: A process between a trained advocate and a survivor/victim and/or child to develop strategies for minimizing harm and enhancing protection before, during, and after experiencing domestic abuse/violence.

Services: Programs, resources, and activities incorporating applicable cultural traditions, practices, and customs, as well as access to knowledge and practices designed to assist families experiencing domestic abuse.

Considerations for Professional Development

All those interacting with families where one parent is abusive to the other and/or the children should have training on domestic abuse, be part of the community (or connected to the community with a specific understanding of the community culture and services available), and adhere to applicable professional, organizational, or cultural standards. In addition to training on domestic abuse, the following areas should be included in regular training programs for court staff, judicial officers, practitioners, service providers, and others working with families:

- Dynamics of domestic abuse, including the impact on Indigenous people, children, and communities;
- Dangerous or lethal risk factors⁸ as defined in research on intimate partner violence and children;
- Trauma (associated with experiencing domestic abuse and historical and intergenerational trauma) and trauma-informed responses;
- Sexual violence;
- Child abuse;
- Bias (implicit, explicit, racial, cultural, gender, ethnic, and confirmation);
- Systemic barriers to access to justice;
- Missing and Murdered Indigenous Women (MMIW); and
- Promising practices that are culturally responsive to enhance the safety of children in custody and parenting time decision-making, such as supervised visitation and exchange practices.

⁸ Risk research and tools have generally not focused on or considered cultural relevance. Efforts to address this issue are outline in the abstract for the research project, Jacquelyn Campbell, Impact of Culturally Specific Danger Assessment on Safety, Mental Health, and Empowerment, Johns Hopkins Univ., Nat'l Inst. of Health (last visited Jan. 24, 2025).

Recognizing and Understanding Domestic Abuse

About 58% of American Indian and Alaska Native women and 51% of American Indian and Alaska Native men experienced intimate partner violence during their lifetimes.⁹

- An analysis of data from the National Intimate Partner and Sexual Violence Survey showed that among American Indian and Alaska Native (AI/AN) women, 56% had experienced sexual violence in their lifetime; and 96% of AI/AN women who had been victimized had experienced sexual violence by an interracial perpetrator (a perpetrator who was not AI or AN), compared to 21% of the AI/AN women who experienced sexual violence by an intraracial perpetrator (who was also AI or AN).¹⁰ AI/AN women and men were significantly more likely to have experienced violence at least once in their lifetime by a perpetrator of a different race.¹¹

“Indigenous people in the United States have experienced a legacy of intergenerational and historical trauma, including the abuse of generations of Indigenous children in the federal Indian boarding school system. Additionally, studies show disproportionate rates of [gender-based violence] GBV¹² impacting Indigenous women and girls.”¹³

⁹ Ctr. for Disease Control & Prevention, *Violence Against Native Peoples Fact Sheet: CDC works to prevent violence against American Indian and Alaska Native people*, (last visited Jan. 24, 2025).

¹⁰ The White House, *U.S. National Plan to End Gender-Based Violence: Strategies for Action* (May 2023).

¹¹ The White House, *U.S. National Plan to End Gender-Based Violence: Strategies for Action*, 39 (May 2023) (citing André B. Rosay, *Violence Against American Indian and Alaska Native Women and Men*, National Institute of Justice Research Report, Office of Justice Programs, U.S. Department of Justice (May 2016)).

¹² The term gender-based violence is used in the original source material. Intimate partner violence information is often included in a gender-based violence category.

¹³ The White House, *U.S. National Plan to End Gender-Based Violence: Strategies for Action*, 39 (May 2023).

Dr. Maria Yellow Horse Brave Heart, Ph.D defines historical and intergenerational trauma as the “cumulative emotional and psychological wounding across generations including one’s lifespan which emanates from massive group trauma.” ¹⁴

“The fact that American Indian and Alaska Native women experience higher rates of domestic violence and sexual assault than any other population of women in the United States has broad ramifications. One consequence of this reality is that domestic and sexual violence occurs on a spectrum of abusive behavior and can include abduction and murder.” ¹⁵

“Many Native and non-Native domestic violence experts agree that the prevalence of violence in Indian Country is a modern effect of the historical trauma that our people continue to experience. The extent of domestic violence in tribal communities is particularly overwhelming.”¹⁶

Domestic abuse includes abuse that occurs after the parents have become separated, sometimes increasing in intensity and severity. Physical separation does not typically end the power and control dynamics of domestic abuse. “Research suggests tactics such as violence, threats, intimidation, stalking, monitoring, emotional abuse, and manipulation Continue after separation.”¹⁷ “The risk of lethal violence often escalates following separation.”¹⁸

¹⁴ Maria Yellow Horse Brave Heart et al., *Historical trauma among Indigenous Peoples of the Americas: Concepts, Research, and Clinical Considerations*, 43(4) J. of Psychoactive Drugs, 282, 283 (2011).

¹⁵ *Tribal Community Response When a Woman Is Missing: A Toolkit for Action*, National Indigenous Women’s Resource Center (last visited on Jan. 24, 2025).

¹⁶ *Understanding the High Rates of Violence Against Native Americans*, StrongHearts Native Helpline (last visited Jan. 24, 2025).

¹⁷ Nat’l Council of Juv. & Fam. Ct. Judges, *Revised Chapter Four: Families and Children of the Model Code on Domestic and Family Violence*, 34 (2022) (citing Emma Katz et al., *When Coercive Control Continues to Harm Children: Post-Separation Fathering, Stalking and Domestic Violence*, Child Abuse Review, 310 (2020)).

¹⁸ Nat’l Council of Juv. & Fam. Ct. Judges, *Revised Chapter Four: Families and Children of the Model Code on Domestic and Family Violence*, 34 (2022) (citing Kathryn J. Spearman et al., *Post-Separation Abuse: A Concept Analysis* (2022) (citing Evan Stark & Marianne Hester (2019), and April Zeoli et al. (2013) for the risk that lethality often escalates following separation)).

“Postseparation IPV has been found to be higher for Indigenous women than non-Indigenous groups, indicating that simply ‘leaving’ is seldom a feasible or sufficient solution.”¹⁹ Indigenous women may also face such barriers as “(a) fear of biased police and child welfare systems, (b) structural and cumulative violence through colonial historical oppression and exposure to complex trauma across the life course, and (c) potentially losing important connection to land and supports if they leave their communities”²⁰

Children may experience domestic abuse and child abuse in many ways including physical, sexual, or verbal assaults, injury from intervening, from being an eyewitness (of an assault or its aftermath), or by hearing the violence and abuse directed at other family members or pets. These forms of exposure may result in harm to a child.²¹

Experiencing the abuse of one parent by the other is likely to cause harm, which can be significant and long-lasting. An extensive body of research suggests that exposure to domestic abuse places children at risk of adverse consequences²²

¹⁹ Catherine E. McKinley & Jessica L. Liddell, *“Why I Stayed in That Relationship”: Barriers to Indigenous Women’s Ability to Leave Violent Relationships*, 28 *Violence Against Women* 3352, 3353 (2022).

²⁰ Catherine E. McKinley & Jessica L. Liddell, *“Why I Stayed in That Relationship”: Barriers to Indigenous Women’s Ability to Leave Violent Relationships*, 28 *Violence Against Women* 3352, 3355 (2022).

²¹ Nat’l Council of Juv. & Fam. Ct. Judges, *Revised Chapter Four: Families and Children of the Model Code on Domestic and Family Violence*, 15 (2022)(see, e.g., Peter G. Jaffe et al., *Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce* 12-13 (2014); Sibylle Artz et al., *A Comprehensive Review of the Literature on the Impact of Exposure to Intimate Partner Violence for Children and Youth*, 5 *Int’l J. Child, Youth & Fam. Stud.* 493-587 (2014). For Indian children, see also Off. Juv. Just. & Delinq. Prevention, Off. Just. Programs, U.S. Dep’t Just., *Attorney General’s Advisory Committee on American Indian and Alaska Native Children Exposed to Violence: Ending Violence so Children can Thrive* (Nov. 2014)).

²² Nat’l Council of Juv. & Fam. Ct. Judges, *Revised Chapter Four: Families and Children of the Model Code on Domestic and Family Violence*, 36 (2022)(see, e.g., Peter G. Jaffe et al., *Risk Factors for Children in Situations of Family Violence in the Context of Separation and Divorce* 12-13 (2014); Sibylle Artz et al., *A Comprehensive Review of the Literature on the Impact of Exposure to Intimate Partner Violence for Children and Youth*, 5 *Int’l J. Child, Youth & Fam. Stud.* 493-587 (2014). For Indian children, see also Off. Juv. Just. & Delinq. Prevention, Off. Just. Programs, U.S. Dep’t Just., *Attorney General’s Advisory Committee on American Indian and Alaska Native Children Exposed to Violence: Ending Violence so Children can Thrive* (Nov. 2014)); Vincent J. Felitti et al., *Relationship of childhood abuse and household dysfunction*

Child abuse and maltreatment are addressed through the child welfare system subject to separate statutory provisions. The guidance in this document is focused on custody/parenting time decision-making and does not address those separate statutory provisions or child welfare proceedings. Instead, the intent of this guidance is to ensure that courts recognize that an abusive parent's conduct, whether it constitutes domestic abuse as defined herein or child abuse as defined in other code sections, likely poses a threat to a child's physical or psychological well-being and must be addressed as an essential component of custody, parenting time, and visitation.

While this guide focuses on domestic abuse, we recognize that domestic abuse and child abuse does co-occur in some families.²³ In child welfare cases, it is critical for state courts to determine whether a child is an Indian child at the beginning of the case to ensure compliance with Indian Child Welfare Act [ICWA].²⁴ Ongoing efforts to consultation and collaboration with Tribes regarding implementing ICWA's active efforts²⁵ is foundational to the process. This is not a one-sided effort, but a collaborative one, working with sovereign nations within the United States, each with its own structure, culture, history, and traditions.²⁶ "Seeking to understand the cultural components at play means a better understanding of the case and a better chance of making informed decisions for the best outcomes."²⁷

to many of the leading causes of death in adults: The Adverse Childhood Experiences (ACE) Study, 14 Am. J. Preventive Med. 245 (1998); U. Nations Child. Fund (UNICEF), *Behind Closed Doors: The Impact of Domestic Violence on Children* (opens in a new tab(2006)).

²³ Jeffery L. Edleson, *The Overlap Between Child Maltreatment and Women Battering*, 5 Violence Against Women, 134.

²⁴ For information on the Indian Child Welfare Act (ICWA), see ICWA Courts, Nat'l Council of Juv. & Fam. Ct. Judges (but note, ICWA is not applicable in custody cases involving biological parents).

²⁵ The federal regulations implementing ICWA state that "active efforts" are "affirmative, active, thorough and timely efforts intended primarily to maintain or reunite an Indian child with his or her family." Lynelle Hartway & Adrea Korthase, *The Indian Child Welfare Act and Active Efforts: Past and Present*, Nat'l Council of Juv. & Fam. Ct. Judges (2020)(citing 25 C.F.R. § 23.2; Guidelines for Implementing the Indian Child Welfare Act, U.S. Dept. of Interior, Office of the Asst. Sec. Indian Affairs, Bureau of Indian Affairs (December 2016), p. 39 (ICWA Guidelines)).

²⁶ Lynelle Hartway & Adrea Korthase, *The Indian Child Welfare Act and Active Efforts: Past and Present*, Nat'l Council of Juv. & Fam. Ct. Judges (2020).

²⁷ *Id.*

As domestic abuse often crosses many court case types, it cannot be siloed as a separate factor; it uniquely affects every part of family life and parenting.²⁸

The guidance below also recognizes the need for courts and practitioners to identify and address the many contexts (individual, social, and cultural) within which parents commit or experience abuse²⁹. Identifying domestic abuse is important, but just knowing that abuse has occurred or is still occurring does not convey all the information necessary to make informed decisions. The specific nature and context of the abuse must be understood: who is doing what to whom, why, and to what effect. System approaches should include a careful analysis and tailored response, which means that adequate information is obtained (safely and ethically) and provided to the court, allowing for a comprehensive assessment of the context, nature, and effects of domestic abuse on the parent and children who experienced abuse.³⁰

State and Tribal Court Collaboration Considerations

State court judges should foster strong collaborations with Tribal courts, ensuring that Tribal court orders are respected, communication processes are established, and ongoing conversations around cultural responsiveness and education are integrated into the state court system. Judicial leadership is pivotal in building respectful long-term connections with Tribal court systems.

Several intergovernmental justice models³¹ have been established to create systems that complement each other through a respect for the role culture plays in building court-based responses linked to healing and resiliency through connections with the Tribal community.³²

²⁸ Nat'l Council of Juv. & Fam. Ct. Judges, *Revised Chapter Four: Families and Children of the Model Code on Domestic and Family Violence* (2022).

²⁹ *Id.* at 11.

³⁰ *Id.* at 11-12.

³¹ See Jenny Walter & Korey Wahwassuck, *Promising Strategies: Tribal-State Intergovernmental Collaborations*, Tribal L. & Pol'y Inst. (2024).

³² *Id.*

These meaningful collaborations can enhance access to resources, improve services, build community partnerships, and allow creative cross-jurisdiction solutions. Judicial leadership approaches imbued with cultural humility create the opportunity to break down silos between the state and Tribal court systems and build solid and lasting relationships.³³

Considerations for building effective partnerships: state and Tribal court systems:

- Cross Training (topics)
 - Role of culture in the court system
 - Full Faith and Credit requirements and best practices
 - Court processes and practices in domestic abuse cases
 - Legal and procedural standards in both court systems
 - Culturally specific services and approaches
 - Understanding cultural context (parenting, service provisions, trauma-informed responses, promoting compliance with court orders and intervention programs, and evidence-based practices)
- System Coordination³⁴
 - Establish a coordinated community response, including stakeholders from state and Tribal court systems
 - Include a Tribal liaison in the district attorneys/attorney general's office
 - Schedule tours of courts in state and Tribal systems
 - Include advocates, persons with lived experience, and Elders in system coordination and reform efforts
 - Connect with programs that focus on the prevention of domestic abuse for youth/teens

³³ *Id.*

³⁴ For examples on types of Tribal-State Collaborations, see Jenny Walter & Korey Wahwassuck, *Promising Strategies: Tribal-State Intergovernmental Collaborations*, Tribal L. & Pol'y Inst. (2024).

- Information and Legal Resource Coordination
 - Develop or adapt database systems³⁵ to allow access to court orders across systems (as allowable within the jurisdiction's ethical and legal parameters)
 - Share electronic access to court opinions and codes
 - Develop protocols for sharing information on cases (within the legal and ethical standards/requirements of the applicable Tribal Nation and state court jurisdiction)

Considerations regarding the best interest of the child

When domestic abuse is present in the case courts should consider:

- The nature and context of domestic abuse by one parent against the other and any abuse experienced by the child from the parent who is abusive.
- Any information about current or future risk of harm to the child or the parent who is abused posed by the abusive parent, including a child's expressions of distress about contact with the parent who is abusive.
- The effects of domestic abuse or child abuse on the child's overall well-being.
- The child's historical and present relationship with each parent.
- Any protective behaviors engaged in by a parent who is abused to support the safety and psychological well-being of each child.
- Whether and how each child's physical, mental, spiritual, social, emotional, educational, and psychological needs are or have been met by each parent.
- What access the child has to family, kin, and peers who support the positive interests of the child.

³⁵ For more information on Tribal Criminal Jurisdiction Over Non-Indians, see *Tribal Criminal Jurisdiction Over Non-Indians: Violence Against Women Reauthorization Act of 2022 and Tribal Access Programs*, TribalVAWA.org, Tribal L. & Pol'y Inst. (last visited Jan. 26, 2024).

- Child's interest and connection to the Tribal Nation's customs, practices, traditions, ceremony, and kinship system.

Allegations that a child is resisting or refusing to participate in contact with the other parent should be assessed by the court to determine if the child is, in fact, resisting or refusing contact and, if so, if the child's behavior is related in any way to domestic or child abuse. Court responses should be based on the best interest of the child's determination within a cultural context and prioritize the safety of the child and the parent who has been abused.³⁶

Considerations for Court Responses

After having assessed the nature, context, and effects of domestic abuse, the court shall address the identified effects of domestic abuse or child abuse on the child. Provisions to promote the child's and the survivor parent's safety, recovery, and resilience, and the abusive parent's behavioral change and compliance with court orders could include, but are not limited to:

- Scheduling cases to allow for time to receive and assess information necessary to create a customized, comprehensive court order matching relief and intervention provisions to the needs of the family.
- Protecting the right of the child to know and use their Tribal name and support enrollment as Tribal members.

³⁶ This recommendation "addresses an argument that is made to counter an allegation of domestic abuse, the argument that the parent who is alleging domestic or child abuse is 'alienating' the child from the other parent, especially if the child is resisting contact with the alleged abusive parent. Research suggests that this tactic can be effective in directing attention away from the conduct of the parent who is abusive and in producing an outcome in favor of the parent who is abusive: 'The proceedings and outcomes of cases involved in these studies reflect the overall lack of understanding of the nature of IPV and its impacts on both adults and children in the court system. In determining custody and access, judges are more likely to bring attention to alienating behaviors than IPV.'" Nat'l Council of Juv. & Fam. Ct. Judges, *Revised Chapter Four: Families and Children of the Model Code on Domestic and Family Violence*, 62 (2022)(citing Jassamine Tabibi et al., *Misuse of Parental Alienation in Family Court Proceedings Involving Allegations of Intimate Partner Violence – Part 1: Understanding the Issue*, Learning Network Issue 33, Ctr. Resh. & Educ. Violence Against Women & Child, 7 (Feb. 2021)).

- If children can form language and their own views, as deemed appropriate based on age, child development, and the child's wishes, offering opportunities³⁷ for the child to voice their realities to the court. Listening to children is a key component in assessing the child's best interest from the child's perspective and respecting each child's chosen journey.
- Ensuring that when the courts use professionals³⁸ to provide information, assessment, or evaluative services, the person has specific domestic abuse experience, training, qualifications, and cultural connections and knowledge.
- Connecting children to services rooted in the child's culture to allow them to express emotions about both parents without judgment, assist them in understanding what happened, promote healing, and help them engage in the process of recovery.
- Including financial assistance³⁹ provisions in the court order to meet the needs of the survivor and the children.

³⁷ Courts should consider not having a child testify until the end of all evidence to determine if the testimony is necessary. Other considerations for the court include: (1) child is competent; (2) offer of proof; (4) relevancy; (5) is it necessary to your decision; (6) hearsay exception; (7) needs of this child; (8) does the need for the testimony outweigh adverse effects. Presentation: Hon. Steve Aycock, *Should Children Be Allowed To Testify As Witnesses In Civil Matters Where They Are Not The Direct Victim?* slide 12. Other ways a child's voice may be included is through a letter, in camera discussion, or through a third party per consent of the child.

³⁸ Some courts have used such persons as guardians ad litem, psychologists, counselors, and attorneys to assist in information gathering and assessments in child custody cases. The focus of who the court uses for these types of functions should be on matching the request from the court to the person's experience and training needed to safely and effectively engage with the family with an understanding of the applicable context (cultural, social, individual) to avoid bias.

³⁹ Financial support for children is an essential relief needed for survivors in domestic abuse cases. Parents who are abusive to their partner often control access to resources such as bank accounts, credit cards, financial information, and pay checks causing barriers to escaping an abusive relationship.

- Supporting the child’s ability to maintain healthy relationships with parents, siblings, grandparents, aunts, uncles, cousins, and others identified as safe positive connections that are part of their kinship system (for both sides of the family).
- Through referrals and financial provisions, providing opportunities for the child to connect to the community, attend events, obtain knowledge of traditions, receive services, become involved in activities, and continue ties to kin/family members.
- Allowing advocates to accompany parents who have been abused in the courtroom and can offer information and referrals about legal assistance for all litigants.
- Providing information on available services (court-based and community-based), including safety planning services, which are essential for survivors and children and should be offered by trained advocates within the community.

Additional Responses

- “Whenever possible, supporting efforts that allow the child to remain in the community and continued safe connections to family and community members and promote cultural continuity.⁴⁰
- When the court grants grandparents parenting time/custody, it is essential to connect grandparents with services for children/youth who have experienced domestic abuse.⁴¹ Children and youth may need assistance in overcoming trauma and coping with the effects of experiencing domestic abuse, especially when a youth’s reactions

⁴⁰ see Central Council of the Tlingit and Haida Indian Tribes of Alaska (Tlingit & Haida) Tribal code: CSC Stat. No. 04.01.008(B)(7).

⁴¹ For information on adolescent brain development, see Claire Crooks & Jessica Pearce, *Applying an Understanding of Adolescent Brain Development in Teen Dating Violence Cases*, Nat’l Council of Juv. & Fam. Ct. Judges (2021).

are harmful, such as substance use or aggressive behaviors toward their caregivers or peers.

- When the court determines it is in the best interest of the child to have visitation, access, or contact with the parent who is abusive, the court should consider creating parenting time that allows for access to events, practices, and activities within their Tribal community. Judges should detail parenting time around cultural events so the parent who is abusive does not use a cultural event as an opportunity to be in the presence of and continue to abuse the other parent in violation of the court order.
- Judicial officers, court staff, practitioners, service providers, and others interacting with the family should be trained in domestic abuse, use trauma-informed practices⁴² (for adults, children, and youth), and recognize and respond to bias and its impact within the system. Judicial demeanor and the court setting can aggravate or mitigate the trauma triggers for persons who have experienced abuse.
- Courts who have ordered supervised visitation, safe exchange, programs, or other interventions (such as APIP) in a child custody case involving domestic abuse should schedule compliance review hearings as appropriate to enhance safety, ensure compliance with court orders, and encourage positive behavioral changes for the parent who has been abusive.

⁴² For more information on trauma-informed training, see *Trauma Informed Care*, Trauma Pol’y (last visited on Jan. 27, 2025); *National Native Children’s Trauma Center*, Univ. Mont. (last visited on Jan. 27, 2025); Nat’l Child Traumatic Stress Network, *NCTSN Bench Card: For the Trauma-Informed Judge*, Nat’l Council of Juv. & Fam. Ct. Judges (2013).

- Courts, especially during compliance review dockets, may include wellness court⁴³ approaches if such approaches are deemed safe for the survivor parent and children and appropriate for the parent who has been abusive to support behavioral change, restorative community actions, and compliance with court orders.
- Judicial officers and court staff should be knowledgeable of the available intervention programs and approaches within the Tribal community for parents who have been abusive.
- Practitioners interacting with the court should provide information (within the applicable ethical parameters) to help the court identify necessary safety and accountability measures.
- Judges should recognize when the court process is being used to harass, intimidate, or otherwise abuse the other parent. Litigation abuse involves using repeated court actions not warranted by existing law or making arguments that are not in good faith to harass, coerce, or control the other party, diminish or exhaust the other party's financial resources, or compromise the other party's employment or housing.⁴⁴
- In resolving custody or visitation issues, It should be determined whether there is a safety risk to the parent who has been abused before requiring mediation, counseling, alternative justice, peace-making, circle sentencing, or traditional Native ceremonies, which may be used in cases without domestic abuse.⁴⁵ These practices should, therefore, recognize the potential harm in cases involving domestic abuse while also respecting the autonomy of the parent who is abused and providing necessary safeguards designed to account for the inherent power imbalance of coercive control and the

⁴³ For more information on wellness courts, see *Tribal Healing to Wellness Courts: Resources and Tools*, Tribal L. & Pol'y Inst. (last visited Jan. 27, 2025).

⁴⁴ Jerry Bowles et al., *A Judicial Guide to Child Safety in Custody Cases*, Nat'l Council of Juv. & Fam. Ct. Judges (2008).

⁴⁵ For an example of code language, see Turtle Mountain Band of Chippewa Indians Tribal Code: TMTC § 37.03.070(f).

potential for intimidation, harassment, retaliation, and violence. Participation should be voluntary, and survivors should be given the opportunity to opt-in (rather than be required to opt-out) for one of the approaches/services after discussing the safety measures needed for their participation.

- Subject to the Tribal Nation's legal standard around modification, when ruling upon a request to modify or eliminate conditions in a custody and parenting time order related to supervised visitation or exchange for the parent who is abusive, the court should consider
 - the factors outlined in the best interest of a child section of this document;
 - information related to any behaviors by the parent who is abusive during parenting time or exchange that cause concerns for the safety and physical or psychological well-being of the child or the parent who is abused;
 - record of past and current compliance with court orders;
 - how any proposed modification of the terms of the court order will promote the physical and psychological well-being of the child and the safety of the victim parent;
 - whether a parent who is abusive has engaged meaningfully with the community programs as mandated by the court, has genuinely acknowledged past harm, and has committed to and demonstrated effort towards changing the behaviors and addressing the issues that necessitated the supervision, restrictions, and requirements placed on parenting time/visitation by the court.
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