

FAST FACTS

Tribal Courts are instrumentalities of tribal governments with authority to issue protective orders (also called protection orders) for members and non-members. There are 29 federally recognized tribes in Washington State.

In 2018, it was reported that Washington State had a population of 226,099, or 3% of the population, who identified as American Indian or Alaska Native.¹ Approximately 45,661 (2.2%) people in the Seattle area identified themselves as American Indian or Alaska Native, which is consistent with the overall population of the United States.

A 2018 report showed that 71% of American Indians and Alaska Natives live in or near cities.² Many Native people travel back and forth from reservations to urban areas for work, medical care, and educational opportunities.

Recent surveys show that 63% of domestic violence offenses against Native women are perpetrated by non-Indians.

TRIBAL COURT AUTHORITY

Tribal courts have civil jurisdiction to both issue and enforce DV protection orders:

- a. Regardless of whether they involve member Indians, non-member Indians, or non-Indians;
- b. In matters arising anywhere within the Tribe’s “Indian Country.” (This includes all tribal trust land, land held in trust for individual Indians, and fee land within the exterior borders of the Tribe’s reservation, as well as other lands described in 18 U.S.C. 1151).³

Tribal courts have “special criminal jurisdiction” over non-Native perpetrators of domestic violence, sexual assault, child abuse, stalking, sex trafficking, obstruction of justice, and assaults on tribal law enforcement officers on tribal lands.

¹ *Native Americans and the US Census: How the count has changed*, USA Facts, (Nov. 21, 2019, updated Jan 20, 2020), <https://usafacts.org/articles/native-americans-and-us-census-how-count-has-changed/>.

² Annita Lucchesi (Southern Cheyenne) & Abigail Echo-Hawk (Pawnee), Urban Indian Health Institute, *Missing and Murdered Indigenous Women & Girls: A Snapshot of data from 71 urban cities in the United States (2018)*, available at <https://www.uihi.org/resources/missing-and-murdered-indigenous-women-girls/>.

³ Violence Against Women Act (reauthorized 2013), 18 U.S.C. § 2265(e).

TRIBAL COURTS & DOMESTIC VIOLENCE BENCH CARD

For full reference materials please see Chapter 13 of the 2021 Bench Guide on Domestic Violence

AUTHORITY TO ENFORCE TRIBAL COURT ORDERS

State Courts in Washington have the authority to enforce Tribal Protection orders.⁴

Federal law, 18 U.S.C. § 2265, requires that any protection order issued by the court of a state or Indian tribe be accorded full faith and credit and enforced by the court of another state or Indian tribe, if the protection order is consistent with 18 U.S.C. § 2265(b). The Washington Foreign Protection Order Full Faith and Credit Act, Chapter 26.52 RCW, implements this requirement in Washington.

Registration of a Protection Order in Washington State is not a prerequisite to enforcement.⁵

Under 18 U.S.C. § 2265(d)(2), a protection order issued by a state or Indian tribe must be accorded full faith and credit regardless of whether it is registered or filed in the court of the enforcing state or Indian tribe. Washington law permits protection orders to be filed without cost, but filing is not a prerequisite to enforcement. RCW 26.52.030.

Requirements for enforcement under 18 U.S.C. § 2265(b).

The issuing court must have had both personal jurisdiction over the respondent and subject matter jurisdiction, and the respondent must have received reasonable notice and an opportunity to be heard sufficient to protect the respondent's right to due process.

This information should be in the findings section of the tribal court order.

Child Custody and Visitation

Washington's Foreign Protection Order Full Faith and Credit Act provides that, "any disputes regarding provisions in foreign protection orders dealing with custody of children, residential placement of children, or visitation with children shall be resolved judicially. The proper venue and jurisdiction for such judicial proceedings shall be determined in accordance with Chapter 26.27 RCW and in accordance with the parental kidnapping prevention act, 28 U.S.C.A. 1738A."⁶

AUTHORITY TO CONSULT TRIBAL COURT JUDGES

Civil Rule 82.5 gives state court judges explicit authority to communicate with tribal court counterparts on specific cases without triggering the rules against *ex parte* communication. The procedure and requirements are provided in the rule.

Remember to:

1. Ask every party if there is a related court order or matter in any other court, including tribal courts.
2. Register protection orders if they have not already been in the State system. This is not required for enforcement, but for ease of use.
3. Consider consultation with Native American resource providers if ordering services for the parties.

⁴ See Washington State Office of the Attorney General's Letter AGO 2018 No. 5, available at: <https://www.atg.wa.gov/ago-opinions/state-obligation-enforce-protection-orders-issued-courts-other-states-or-tribal-courts>.

⁵ *Id.*

⁶ RCW 26.52.080.