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Title

Seeking Justice: Limited Tribal Jurisdiction in Cases of Sexual Violence

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The background of the slide features a dark, moody illustration. In the center, a woman with dark hair is shown from the chest up, her eyes closed and her hand covering her face in a gesture of distress or grief. She is wearing a light blue top. In the lower right corner, the silhouettes of two men are visible; one is wearing a cap and a uniform, suggesting a police officer, while the other is in civilian clothes. The overall color palette is dark, with shades of brown, grey, and blue.

Seeking Justice

Limited Tribal Jurisdiction in Cases of Sexual and Domestic Violence

Situation



As a hypothetical situation, to illustrate the legal roadblocks facing indigenous women in the United States, I will trace the steps one woman could take to find justice in a case of domestic violence and sexual assault.

She grew up on the Hopi reservation but met her husband nearby in the County of Coconino. She married and now lives on the reservation with her husband and their 2 year old son. Her husband is struggling with alcoholism and has been aggressive toward her for quite a while. Six months ago, she was raped by her husband but was too scared and ashamed to come forward and ask for help.

I will illustrate the steps she, as someone who was raped by her non-Indian husband in the Hopi reservation, in the county of Coconino, can pursue under the statutes of Arizona in order to pursue justice.

This process is largely complicated by legal precedents and acts including the Indian Civil Rights Act and *Oliphant v Suquamish*.

The First Few things to know...

The Hopi Tribal Government has no jurisdiction over this case. This is due to various factors including:

- (1) Limitations as a result of the Indian Civil Rights Act- This act, which imposed many tenets of the Bill of Rights onto Tribal Governments fundamentally limited tribal jurisdiction by barring tribal jurisdiction in felony cases and demanding so many resources that many tribes cannot pay the costs for pursuing these cases.
- (2) *Oliphant v Suquamish*- this ruled that tribes cannot try non-Indians, meaning that even if the ICRA hadn't made it impossible for the tribe to prosecute your case, the fact that your husband is a non-indian does.

These precedents and acts mean that your case cannot fall under tribal jurisdiction. You will have to go through the state of Arizona in order to find justice.

The Tribal Government Recognizes these Limitations:

WHEREAS, Family violence is a widespread form of crime among the Hopi people which often is not successfully addressed by traditional tools and approaches of the criminal justice system; and

WHEREAS, Many Hopi victims of family violence are hesitant to pursue criminal prosecution against the perpetrators of such violence because they do not want a spouse or other family member jailed or otherwise enter into an adversarial criminal proceeding against such person; and

WHEREAS, Even if a victim of family violence chooses to pursue criminal prosecution against the perpetrator of such violence, it may prove an unsatisfactory solution because of the amount of time required for the case to come to trial; and

Legal Options

- (1) File for a Temporary Domestic Violence Restraining Order
- (2) Have a District Attorney file a Civil Protection Order
- (3) File a Police Report
- (4) Call RAINN to explore the Statutes of limitation for prosecution of rape

Extra-Legal Options

- (1) Call The Arizona Coalition to End Sexual and Domestic Violence (ACESDV)
- (2) Find a shelter
- (3) Reach out to tribal authorities to see if they have any resources

Today, I want to focus on the measures recommended by the Tribal Government...

DVROs and CPOs

Domestic Violence Restraining Orders/
Civil Protection Orders

CPOs/DVROs are what the tribal government recommends doing:

Ordinance No. 50. – Resolution H-86-96 approves the Hopi Family Relations Ordinance.

WHEREAS, Civil protection orders are an effective tool in addressing family violence by providing victims of such abuse with a fast, efficient means, instead of or in addition to other forms of legal redress, to reduce, prevent, and eliminate family abuse and violence; and

WHEREAS, Properly used and enforced, civil protection orders can help in the prevention of specific behavior which can lead to future family violence and can enhance public safety efforts by enabling the courts and other law enforcement agencies to intervene in matters of family violence on an emergency and temporary, as well as a permanent, basis; and

CPO vs DVRO

CPOs are Civil Protection Orders

DVROs are Domestic Violence Restraining Orders

In essence, they accomplish very similar aims. However, the steps needed to pursue them are completely different. A CPO needs to be requested by a District Attorney. Although this can happen, often without too much trouble, a DA can just decline to take the case. In addition:

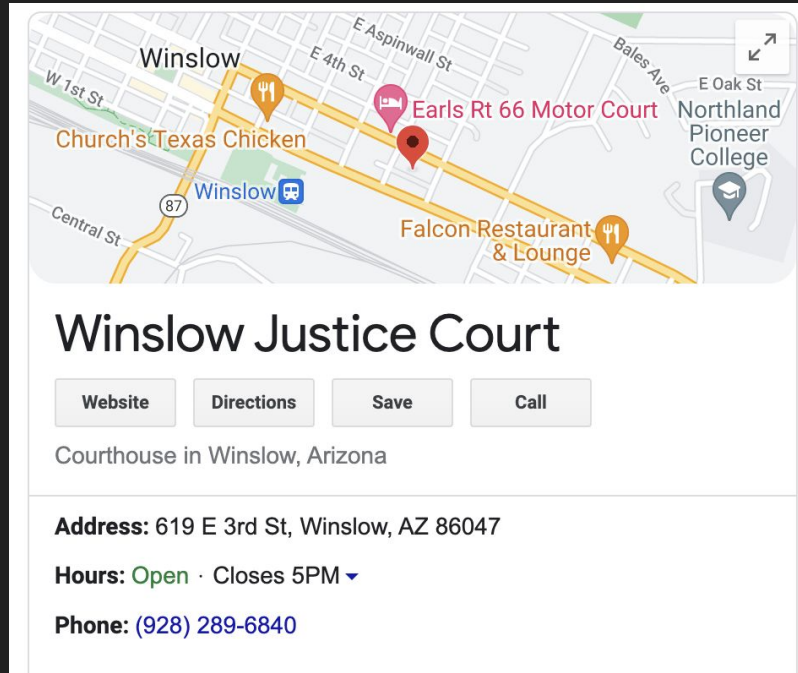
‘victims in a criminal investigation may have little control over CPOs, and may even find that CPOs are issued with more restrictions than anticipated.’ - MacMillan Law Firm

In a DVRO, the litigant themselves must file all the forms. While this is a complex, difficult, and finicky process, the person will eventually get in front of a judge. They are in charge of their case and they can keep fighting for justice where a DA may have previously refused.

So, for this case, we are going to presume that a DA has already been sought out and nothing came of it. In that case, how can we go about trying to get a DVRO?

Filing a T-DVRO (Temporary Domestic Violence Restraining Order)

She will need to identify her superior courthouse that has jurisdiction over her zip code. Since she lives in 86049, she must file at:



She will also need to prepare a variety of forms. Since this Courthouse does not have a Self-help center, she will either have to hire an attorney or navigate the system as a self-represented Litigant. She does not have the financial resources to hire an attorney.

Benefits and Drawbacks of Filing a T-DVRO

BENEFITS

- Judge will likely grant a temporary order
- This can include a move out order for the Husband.
- Primary Physical and legal custody of the child will go to the mother until a further order is made
- The husband will have to keep 500 yards away from the mother and the child at all times
- The father will be required to give up his firearm
- The father cannot come within 500 yards of the mother's workplace, home, or the child's daycare

DRAWBACKS

- It is hard to enforce a TDVRO: if her husband violates it, she can call the police, but they will only arrest him if he is still there when they arrive (police response times rest at 45 minutes for matters like this)
- There are many steps
- He will get to respond to the TDVRO and the order will likely change soon
- He could get angry when served with the DVRO and could lash out at her or the child

Steps to File a DVRO

1. Fill out all necessary forms
2. File at the Courthouse in person
3. Get mailed a hearing date
4. Show up and testify to the Judge
5. The judge will rule on the TDVRO
6. The sheriff will serve the other party with the TDVRO
7. The other party can respond to the DVRO
8. You can file lodgements to support your claim
9. The Department of Child Welfare will investigate and make a recommendation
10. You will both appear in front of the judge for a hearing
11. An order will be rendered- this could be no DVRO or a DVRO that can last up to five years

Forms Needed to file a DVRO

You will need to file:

1. AOC DVPO20F-082520 - NOTICE REGARDING EXCLUSIVE POSSESSION OF A SHARED RESIDENCE
2. AOCDVPO2F-092422 - PETITION FOR DOMESTIC VIOLENCE RESTRAINING ORDER
3. BLANK RESPONSIVE DECLARATION TO PETITION FOR DOMESTIC VIOLENCE RESTRAINING ORDER
4. AOC DVPO21F-010122- SUPPLEMENT TO PETITION
5. AOC DVPO19F-010120- SERVICE OF PROCESS

To have a convincing case, you will likely need a supplemental declaration and lodgements.

Supplemental Declarations

In your Supplemental Declaration, you have an opportunity to speak directly to the judge. This is your chance to convey everything that happened. You are reporting all of this under the threat of perjury.

You need to talk about:

- Why you are requesting a DVRO

- What happened in great detail, what day and time it happened at, who witnessed it, what was said and done.

- Why you are asking for custody of the child. Why is this in the child's best interests?

The Next Steps...

Once the sheriff has served the other party with the TDVRO, they can file a responsive petition.

Another hearing date will be set.

Now, the judge is less likely to order a longer lasting DVRO. You will need to prove that the abuse took place and that you are telling the truth.

While judges will grant temporary DVROs often, they grant lasting DVROs less frequently. You will need evidence.

In order to this, you can submit Lodgements.

Lodgements

For any supplemental declaration that is over ten pages, you need to submit a lodgement and the associated form: Notice of Intent to Lodge Documents.

This will usually include some sort of evidence. This can be text messages he sent you that are threatening, pictures of bruises after the assault, or anything else that you thinks supports your case.

You will then need to sort this evidence into categories, each of which will be an exhibit. Then on the Notice of Intent to Lodge Documents, you will list each exhibit, give a brief description, and then number all of the documents. You will NOT restart the numbering with each exhibit. You will do one long numbering all the way through.

Then you will need a cover page for each exhibit stating your name, your case number, and the exhibit number. These pages will NOT be numbered.

Lodgements (cont.)

Take the Notice of Intent to Lodge Documents and file at the courthouse, in the family law division.

Then 5-10 days before your hearing, bring your lodgements back to the courthouse. These will never get filed, but you will give them to the filing office, who will then give them to the judge.

NOTE: there is no guarantee that the judge will review these documents before your hearing. You will need to advocate for yourself during the hearing and individually request that each exhibit be allowed into evidence.

The Last Steps...

You and the other party will attend a hearing and an order will be created.

This could be a 2-5 year Domestic Violence Restraining Order in which you retain the house and the sole physical and legal custody of your child

OR

The judge could order that the case be dismissed. Your husband could move back home, threaten to retaliate against you for filing it, and you could remain in danger.

Other Options and Concluding Thoughts...

You could also call the police and file a report.

However, the federal or state prosecutors could never get back to you or decide not to prosecute your case. Because of the timeframe between the assault and the date of the complaint (at least six months if you filed today), the odds of the case being dropped is even higher.

The options are incredibly limited. The recourse for justice is incredibly limited. The process of navigating the court system as a self-represented litigant requires skills, time, and resources that many people simply do not have.

This issue was taken from tribal jurisdiction and thrust into the state and federal procedures that fail person after person.

This is not adequate justice.

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Criminal Protective Orders and Domestic Violence Restraining Orders ...

<https://www.mcmanislaw.com/blog/2020/criminal-protective-orders-and-domestic-violence-restraining-orders-nine-essential-things-to-know>.