Sexual Assault: Cultural Considerations for American Indians and Alaska Natives

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Land Acknowledgment

We are currently located in the land of Anishnaabek territory named Bahweting “Place of the Rapids,” comprised of Ojibwe / Chippewa, Odawa /Ottawa and Potawatomi / Bodewadomi tribes.

Anishnaabek means person of the earth or original being of this land.

Our mission is to support Michigan Tribes in promoting the social change necessary to address the disproportionate rates of violence impacting our communities.

UNITING THREE FIRES

AGAINST VIOLENCE

Training | Resources | Support

Overview

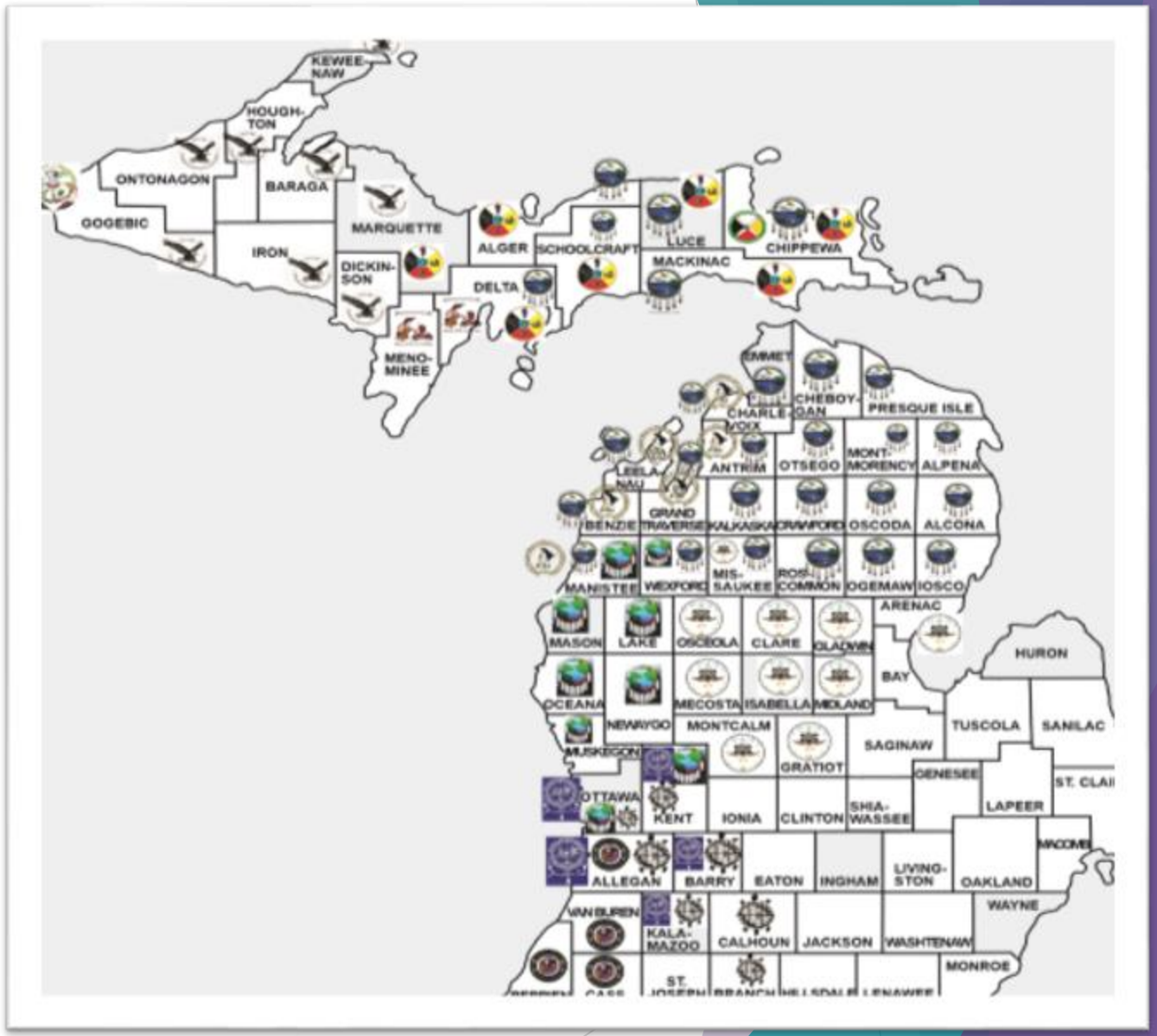
- Indian Tribes
- History of Sexual Violence
- Statistics of Sexual and Interpersonal Violence for AI/AN
- Federal Indian Law and Criminal Justice Considerations
- Other Challenges (Lack of Resources, Invisibility, Etc.)
- Resources Available

In General

- 574 Federally Recognized Tribes throughout United States
  - 12 Federally Recognized Tribes in Michigan
  - 4 State Tribes in Michigan
- Unique Legal Relationship with the US Government
  - Sovereign Nations
  - Freedom from External Control
  - Develop own Laws, Codes, Etc
- Vibrant Societies Rich in Culture, Tradition, Language
  - Three Original Languages of Michigan Potawatomi /Bodewadomi, Odawa/Ottawa, Ojibwe/Chippewa
  - Restoring Culture and Tradition

Michigan's Federally Recognized Tribes

- Bay Mills Indian Community
- Grand Traverse Band of Ottawa and Chippewa Indians
- Hannahville Indian Community
- Nottawaseppi Huron Band of the Potawatomi
- Keweenaw Bay Indian Community
- Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan
- Little River Band of Ottawa Indians
- Little Traverse Bay Bands of Odawa Indians
- Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan
- Pokagon Band of Potawatomi Indians (Michigan and Indiana)
- Saginaw Chippewa Indian Tribe of Michigan
- Sault Ste. Marie Tribe of Chippewa Indians of Michigan



Urban Centers/Programs

Detroit

American Indian Health & Family Services
4880 Lawndale
Detroit, MI 48210
(313) 846-6030
Provide services to all Native American and Canadian First Nations
www.aihfs.org

Grand Rapids

Nottawaseppi Huron Band Potawatomi
Grand Rapids Health Facility
311 State Street
Grand Rapids, MI 49503
616.249.0159
Provide Services to all Federally Recognized Tribal members
www.nhbpi.org

Metro Detroit

Southeastern Michigan Indians Inc.
26641 Lawrence
Center Line, MI 48015
(586) 756-1350
Non-Profit organization that services Native Americans and Canadian First Nations
www.facebook.com/southeasternmichigan.indians

Detroit

North American Indian Assoc.
22720 Plymouth Rd.
Detroit, MI 48239
313-535-2966
Non-Profit Organization that serves Native Americans and Canadian First Nations
www.naiadetroit.org



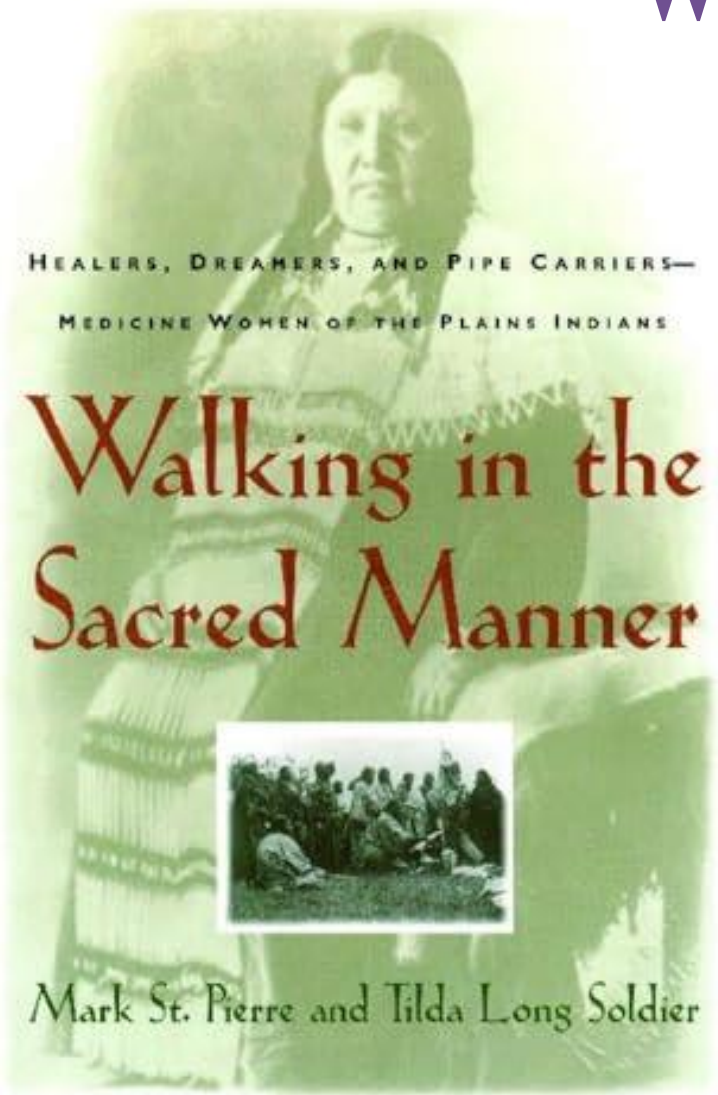


Violence is NOT Traditional

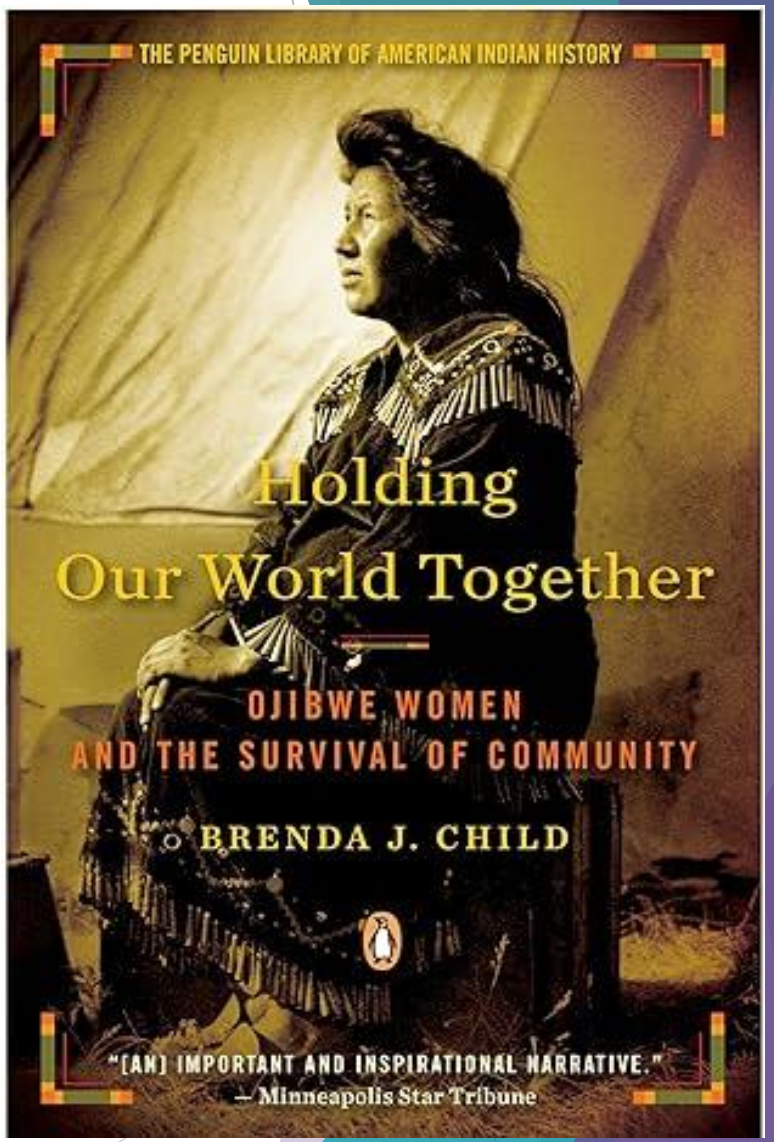




Women are Sacred



- Mark St. Pierre and Tilda Long Soldier write:
  - "[a]mong the Lakota, the woman owned her body and all the rights that went with it.'
- Brenda Child writes:
  - "Women inhabited a world in which the earth was gendered female, and they played powerful roles as healers. They organized labor within their community and held property rights over water, making decisions and controlling an essential part of the seasonal economy. Ojibwe women lived in a society that valued an entire system of beliefs associated with women's work, not just the product of their labor,"





Women are Sacred

- William Bartram (American Naturalist)
  - Studied plant and animal life in Southeastern US (lived amongst Creek and Cherokee Indians)
  - Wrote journals and letters on observations
  - “An Indian never attempts, nay, he cannot use towards a woman amongst them any indelicacy or indecency, either in action or language. I never saw or heard of an instance of an Indian beating his wife or other female, or reproving them in anger or in harsh language”

Pre Colonization and Sexual Assault

- George Croghan, who testified about Indians in the Middle Atlantic colonies in the late 18th century:
  - "I have known more than onest thire Councils, order men to be putt to Death for Committing Rapes, wh[ich] is a Crime they Despise”
- Major General James Clinton of the Continental Army told his troops in 1779
  - "[b]ad as the savages are, they never violate the chastity of any women, their prisoners”

Creek Rape Law (1824)

“And be it farther enacted if any person or persons should undertake to force woman and did it by force, it shall be left to woman what punishment she should satisfied with to whip or pay what she say it be law.”

Colonization and Sexual Assault

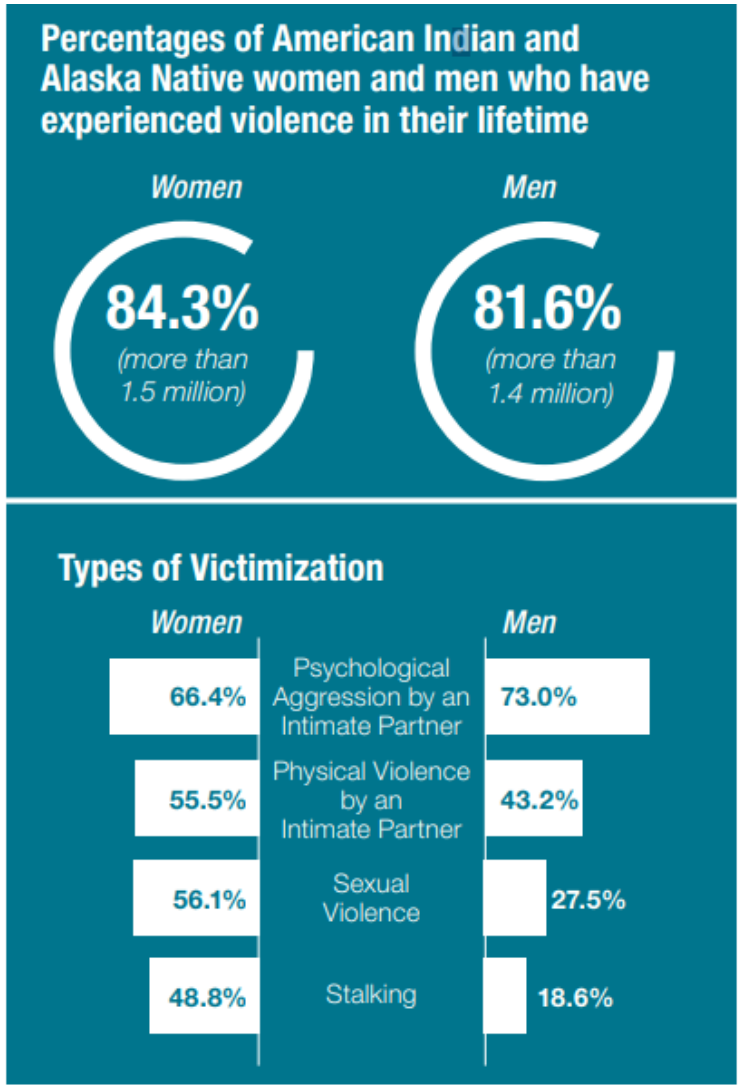
- In a 1909 Congressional debate over punishments for perpetrators of sexual assault against Native women, U.S. Representative Norris indicated,
  - " ... the morals of Indian women are not always as high as those of a white woman and consequently the punishment should be lighter against her."
- In 1968, the Ninth Circuit Court of Appeals upheld a law that imposed a harsher penalty for the rape of a non-Indian woman than an Indian woman"
  - an Indian who rapes an Indian female "shall be imprisoned at the discretion of the court",
  - An Indian convicted of rape upon a non-Indian female "shall suffer death, or imprisonment for any term of years or for life".

Toward an Indigenous Jurisprudence of Rape, Mitchell Hamlin School of Law, Sarah Deer

Rape as a Tool of Colonization

- Forced Removals and Occupations (Trail of Tears, Trail of Death, Long Walk, Gold Rush, etc.)
  - Many accounts of rape existed in these experiences of removal/occupation
- Impacted Gender Roles
  - Patriarchy – lowered status of Indian women
- Sarah Winnemucca, a Paiute leader, wrote in 1883:
  - "My people have been so unhappy for a long time they wish now to disincrease, instead of multiply. The mothers are afraid to have more children, for fear they shall have daughters, who are not safe even in their mother's presence”

Statistics Today….



NIJ.GOV

3. Victimization rates are higher for American Indians and Alaska Natives.

The lifetime victimization rate is 1.2 times as high for American Indian and Alaska Native women as for White women; for men, it is 1.3 times as high.

4. American Indian and Alaska Native female victims are more likely to need services, but they are less likely to have access to those services.

More than two in five American Indian and Alaska Native female victims reported being physically injured, and almost half reported needing services. The services most commonly needed were medical care and legal services. Unfortunately, more than a third (38 percent) were unable to receive necessary services.

5. For American Indians and Alaska Natives, interracial violence is more prevalent than *intraracial* violence.

How did we get to those numbers?

- Tribal Governments were weakened and/or dissolved by colonization
- Policies resulted in significant land loss, assimilation, boarding schools, and breaking of Treaties
- Laws – passed by Congress that continue to threaten Tribal sovereignty

Cycles of trauma from these policies and laws…

Assimilation and Colonization Eras

Colonial and early United States Policy- 1763

- Declaration of Independence

Removal Era- 1803

- Trail of Tears

Allotment Era- 1870

- Dawes Act
- Major Crimes Act

Reorganization Era- 1924

- US Code allowed tribes to enact tribal codes and to build tribal councils

Termination Era- 1953

- Assimilation polices to assimilate Native Americans into mainstream American society
- Public Law 280

Self Determination Era – Present Day

Native American Boarding School era

1869 – 1980's



"A great general has said that the only good Indian is a dead one, and that high sanction of his destruction has been an enormous factor in promoting Indian massacres. In a sense, I agree with the sentiment, but only in this: that all the Indian there is in the race should be dead. Kill the Indian in him, and save the man."

— Gen. Richard Henry Pratt

Results of Assimilation Policies/Boarding Schools/Colonization Policies

- Abuse (physical, sexual, psychological)
- Neglect
- Loss of Language
- Loss of Culture
- Shame
- Guilt
- Lack of:
  - Nurture
  - Affirmation
  - Affection
  - Attachment

Other Laws/Decisions Impacting Tribal Sovereignty and Safety

- Major Crimes Act
- Indian Civil Rights Act
- Oliphant v. Suquamish



Major Crimes Act (1885)

- Authorizes the federal government to prosecute major crimes committed by Indians
  - Murder
  - Manslaughter
  - Rape
  - Assault with intent to kill
  - Arson
  - Burglary
  - Larceny



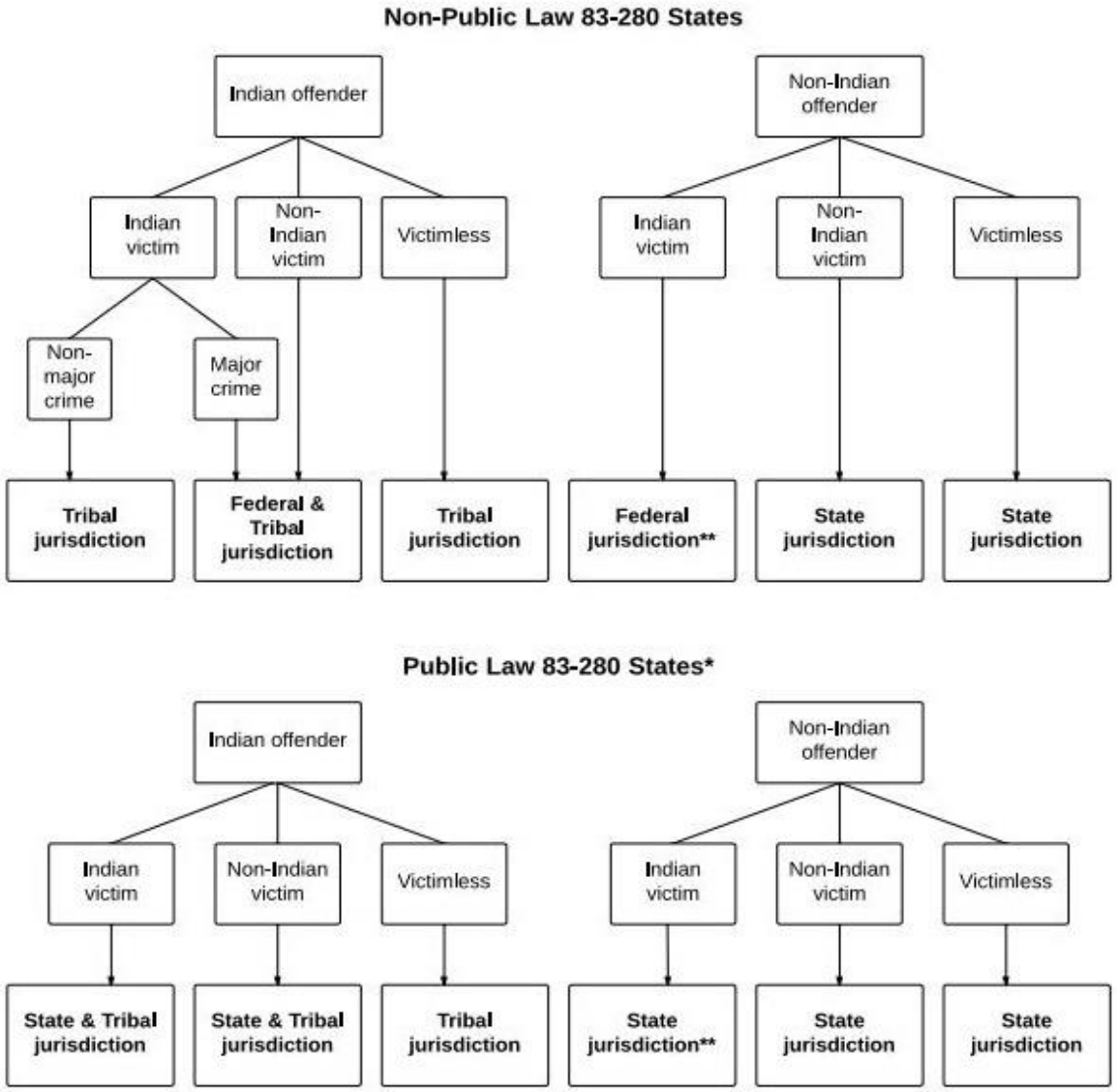
Indian Civil Rights Act (1968)

- Sentencing Limitation*
  - Tribal courts can sentence up to only 1 year, $5000 fine, or both
- 1968 – 6 months 1980's – amended to 1 year
- Not enough time for significant crimes
- Technically Tribe can still prosecute murder, rape, child sexual abuse, etc. (if committed by an Indian)

Oliphant v Suquamish (1978)

- Stripped tribes of jurisdiction over non-Indians
- Tribe has to defer to Federal government*
- Can arrest, if properly deputized by another law enforcement agency…
  - Actual prosecution of crime cannot happen in tribal court

Jurisdiction



* Under the *Tribal Law and Order Act of 2010*, Tribes can opt for added concurrent Federal jurisdiction, with Federal consent. Neither this Tribe-by-Tribe issue nor the various configurations of "Optional 280" status is shown in this chart.
** Under the *Violence Against Women Act Reauthorization of 2013* (VAWA Amendments), after 2015, Tribes may exercise Special Domestic Violence Jurisdiction with the Federal government and with States for certain domestic violence crimes.

Source: The Tribal Law and Order Commission, *A Roadmap for Making Native America Safer: Report to the President and Congress of the United States*

Other Challenges

- Loss of Language
- Loss of Culture
- Mascots
- Invisibility
- Historically Underserved
- Lack of Resources















Other Challenge to Consider: Cultural Abuse

- Native Americans may face cultural abuse
- Not allowing participation in ceremonies
- Using blood quantum (I'm more Native than you are)
- Using Tribal resources against the victim
- Using racial/ethnic slurs against Native American victim
- Threatening to "expose" victim to their Tribal leaders, community leaders, cultural/traditional healers, etc.

Resiliency in Advocacy



Tribal Law and Order Act (TLOA) of 2010

Changed sentencing guidelines from 1 year to 3 years (up to 9 years if 3 offenses committed)

Fines up to $15,000 (as opposed to $5000)



Violence Against Women Act (VAWA) Reauthorization of 2013

Part of Title IX

Special Domestic Violence Criminal Jurisdiction

More Resiliency

- VAWA 2013 recognizes tribes' inherent power to exercise "special domestic violence criminal jurisdiction" (SDVCJ) over certain defendants, regardless of their Indian or non-Indian status, who commit acts of domestic violence or dating violence or violate certain protection orders in Indian country
- Currently 4 of the 12 Tribes of Michigan have implemented SDVCJ
  - Little Traverse Bay Band
  - Nottawaseppi Huron Band
  - Sault Tribe
  - Grand Traverse Band
- Expensive and difficult to implement
- Limited (until 10/22): VAWA22 expands special criminal jurisdiction of Tribal courts to cover non-Native perpetrators of sexual assault, child abuse, stalking, sex trafficking, and assaults on tribal law enforcement officers on tribal lands;

Resources in Michigan

- Each Tribe has advocacy/victim services providing trauma informed and culturally honoring services
- One Tribe has comprehensive, standalone sexual services
  - Establishing relationship with medical provider to provide SANE
- Access to cultural medicines that promote healing
  - Culture Care Kits
- SAFESTAR
  - Sexual Assault Forensic Examinations, Support, Training, Access, and Resources. A unique model of care that draws upon the strength and resilience of Indigenous women to put an end to sexual violence, while also providing compassionate and holistic care for women and teen victims.

Culture Care Kits



Final Points to Consider: Working with Native Survivors

- Recognize the cultural, intergenerational, and historical trauma that have impacted our communities and culture
- Understand the jurisdictional barriers Native's face living on or off of tribal land
- Researching and knowing what cultural, and traditional services may be available to the survivor, per their request