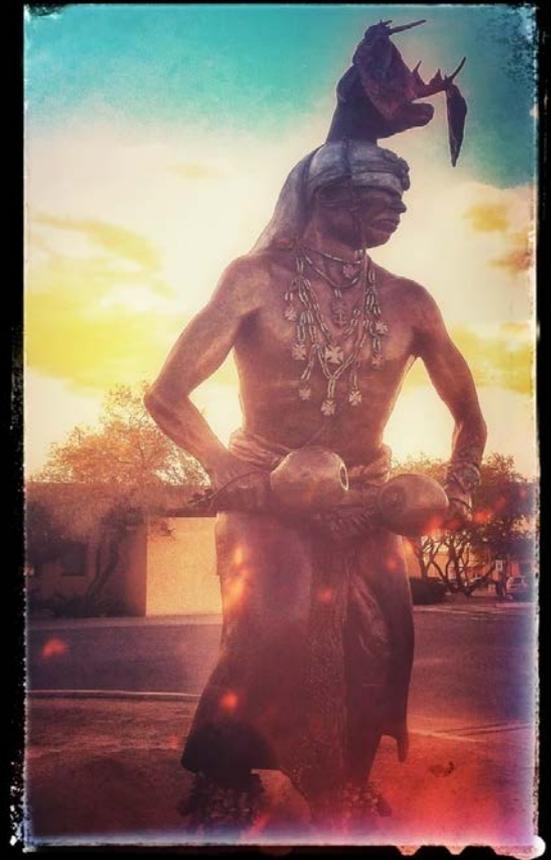


PASCUA YAQUI TRIBE & VAWA



"Tribal governments have an inherent right to protect their people, and all women deserve the right to live free from fear."

- President Barack Obama

- Significant changes have occurred in the ability of tribal governments and tribal courts to address crime occurring in Indian country
 - Tribal Law and Order Act of 2010
 - Violence Against Women Act of 2013
- we will explore these changes with a particular eye toward the issues that may arise during the implementation process
- But first, a look at why:

http://www.washingtonpost.com/national/arizona-tribe-set-to-prosecute-first-non-indian-under-a-new-law/2014/04/18/127a202a-bf20-11e3-bcec-b71ee10e9bc3_story.html



WAR, SLAVERY, & EXILE

1533-1930s- First contact with Spaniards , Rio Yaqui Valley. "Up to this line and as far as the eye can see in these three directions, is Yaqui land. No invaders will be allowed to enter." (1610 Peace Treaty with Spain)

RESISTANCE, HOSTILITIES, & DEFENSE ERA

Jaguar War Shield



Turtle War Scabbard & knives

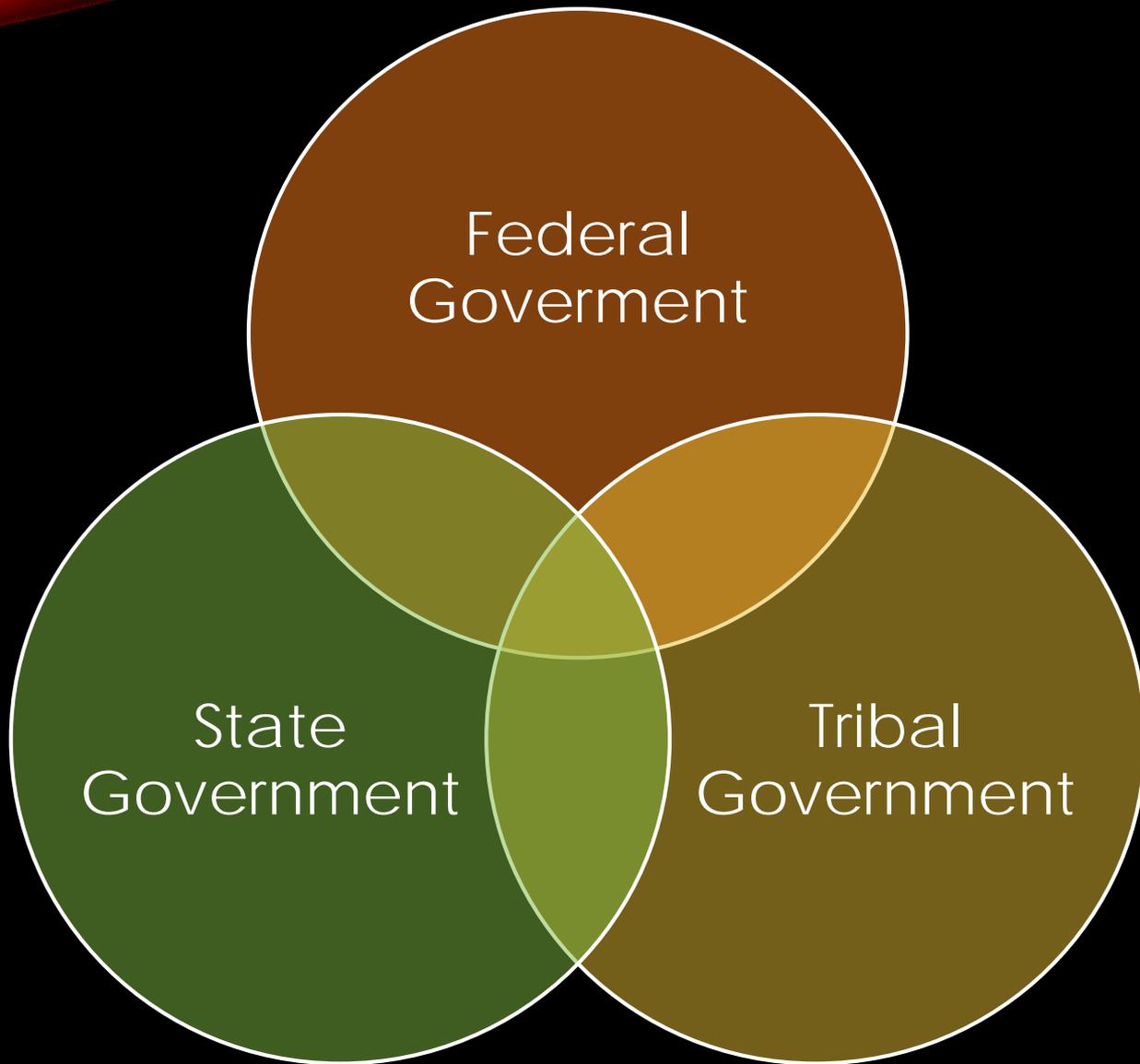


INTERNATIONAL HOSTILITIES

"semi-savage," redskins, blood-thirsty aborigines, marauding reds, savage & rebellious

Bear Valley 1918
(border issues)





PASCUA YAQUI TRIBE

- Two square mile reservation
- 7 miles from City of Tucson
- 20,000+ enrolled tribal members
- 4-5,000 on Reservation
 - 7 off-reservation Yaqui communities
- Appx. 500 non-tribal members reside on reservation
- 799 non-Indian government and casino employees (32% of all employees)



HOUSEHOLD COMPOSITION

- Family Households = 89.8%
- Traditional Married Couples = 32% (State 48%)
- Female Head of Household (single mothers) = 42.9% (Pima County 12.4%)
- Unmarried partners = 12.6%
- Same-Sex Households = .06% (5 total)

HOUSEHOLD

- Households are more likely to contain other relatives=25.9% (besides husband, wife, children) (State 7.3%)
- Children U-18 living with Grandparent=12.2% (425) (ten times more likely than the State 2.3%)

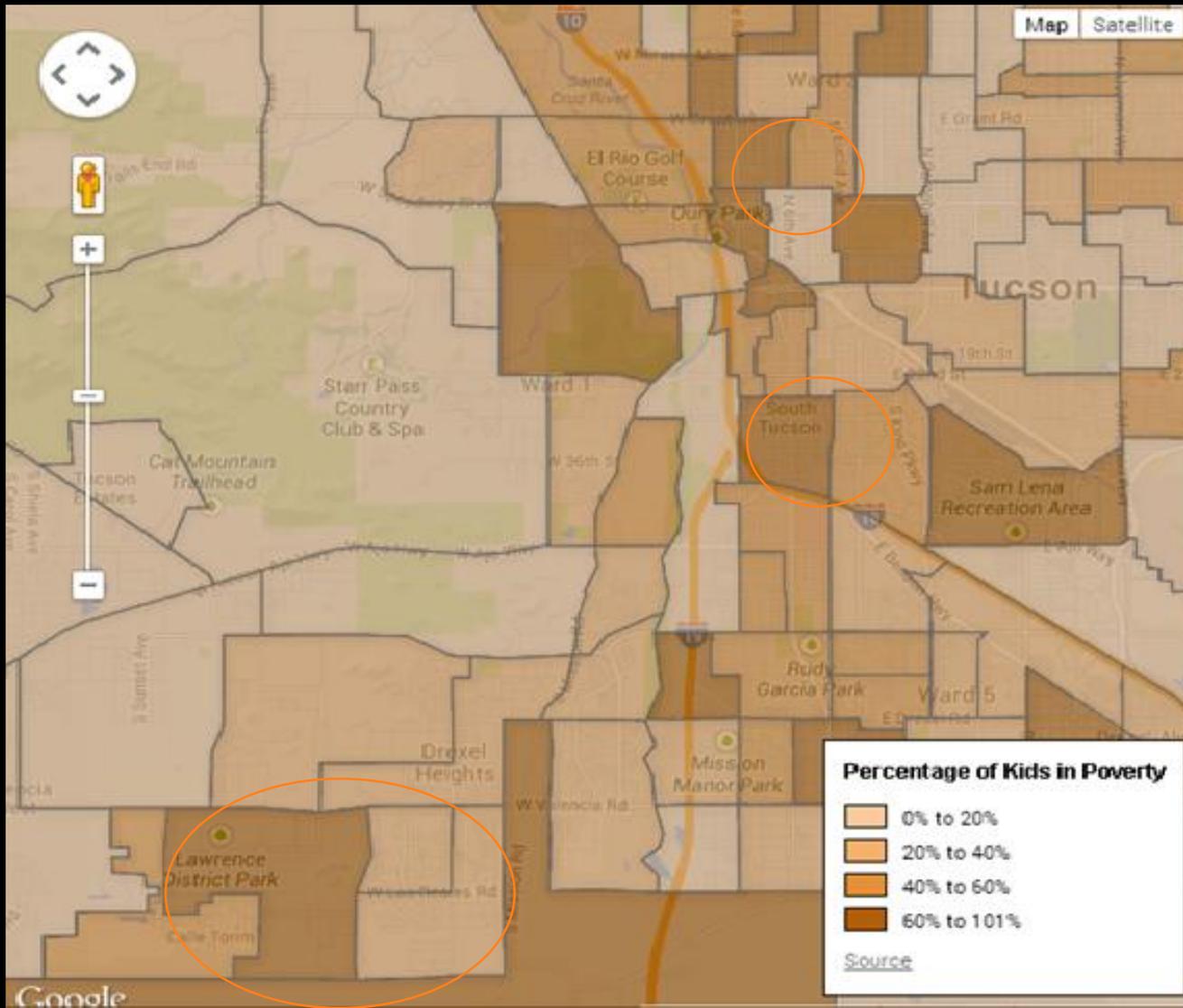
INCOME-POVERTY ON THE RESERVATION



- Almost half the children under 18 (42%) are living in poverty. (State 29%) (O.P. 47%, BL 55%)
- 32% between age 18-64 also live in poverty.
- 42% of our elders 65+ live in poverty.
- 38% of all families live in poverty on the reservation.
- 39% of households are considered "severely poor" (family of 4 income is less than \$11,157/year)
- An additional 11% considered "near poor."

POCKETS OF POVERTY

www.azstarnet.com/poverty



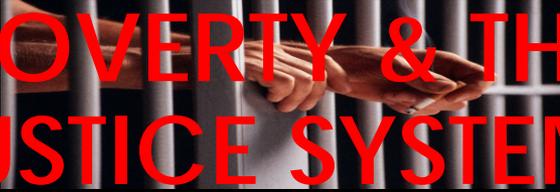
Almost half (42%) of the children under 18 are living in poverty on the PYT Reservation.

O.P. : 47%

B.L.: 55%

AZ: 29%

38% of *all* families live in poverty on the PYT Reservation.



POVERTY & THE CRIMINAL JUSTICE SYSTEM

- Poor young males are twice as likely to be arrested.
 - 75% to 80% of offenders in the PYT CR system are male.
- 40% of prisoners lack a high school diploma or general equivalency degree (GED). (AZ)
- 30% of prisoners were unemployed in the month before arrest and almost twice as many were underemployed. (AZ)
 - 95% of individuals arrested on the PYT Reservation between Aug. 2012 – Jan. 2013 were unemployed.

POVERTY AND CHILD ABUSE

- Children from poor families are 7 times more likely to suffer abuse and/or neglect.
- Children from poor families are 2 times as likely to experience violent crime, including death.
- The number of children in foster care in Pima County spiked 33% from 2012 to 2013.



POVERTY, TEEN PREGNANCY & ABUSE

- Arizona's teen pregnancy rate is the 3rd highest in the nation with most teen moms coming from poor families.
- In 2009, 157 out of every 1,000 teens living on out reservation had babies; compared to 18 out of every 1000 teens from affluent Northeast Pima County.
- The risk of having a baby young rises by 90% for girls who:
 - had an incarcerated family member,
 - witnessed domestic violence, or
 - lived with an addict.
- Substance abuse & domestic violence are the majority reasons that parents who have had children removed have contact with the criminal system.



POVERTY AND EDUCATION

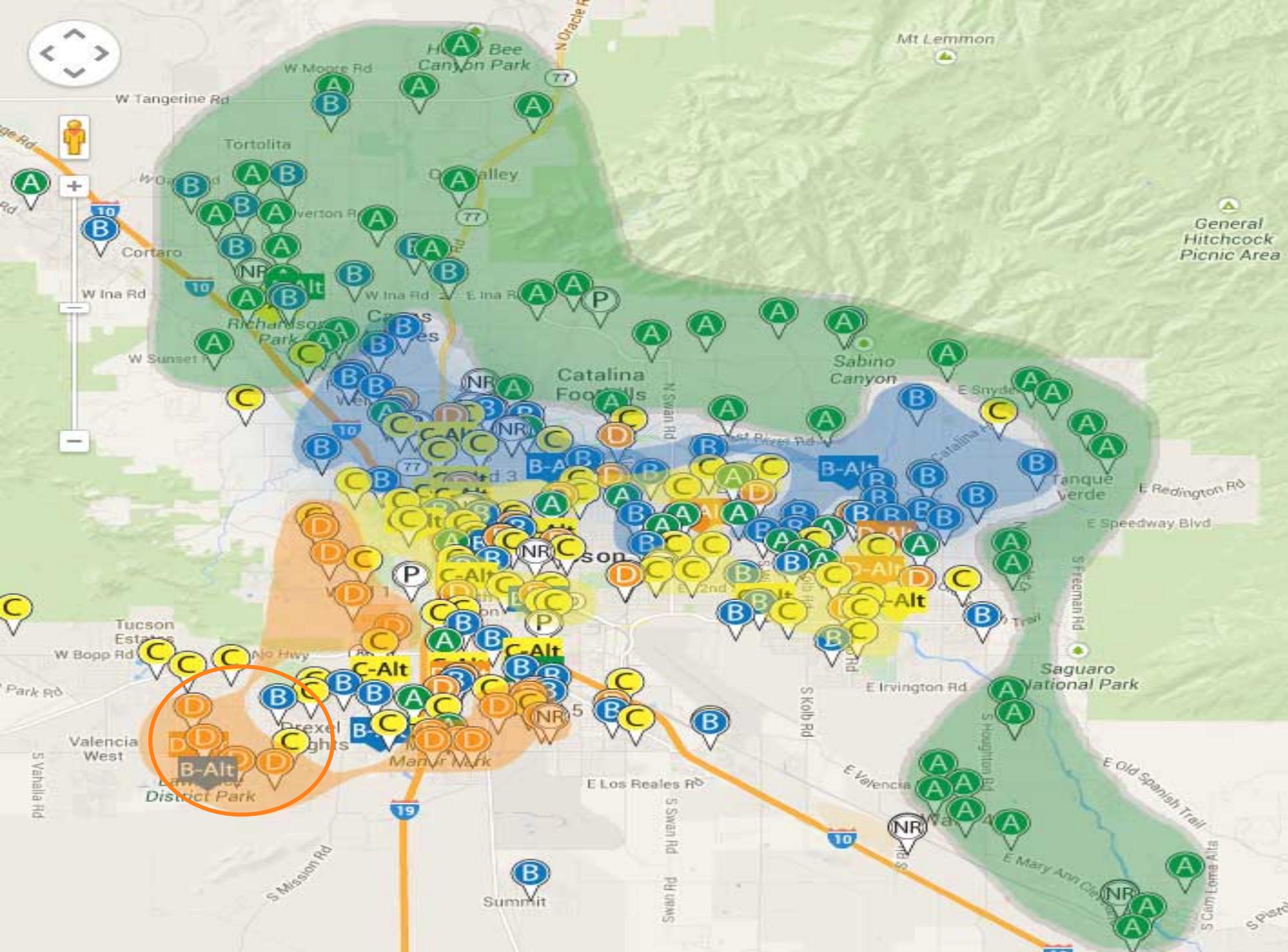
- The lack of a pre-school creates an achievement gap that is difficult to close.
 - Students who don't catch up by the 3rd grade are more likely to drop out of school and end up in minimum-wage jobs.
 - New 3rd grade testing requirements
 - High truancy rate on the PYT Reservation
- A 0% poverty rate existed on the Pascua Yaqui Reservation for 3% of people with a college degree.

ATTENDANCE, AIMS' AND TRUANCY

AIMS Math Results (2012-2013) and Attendance for Yaqui students

August 9, 2013

Grade	Falls Far Below		Attendance	Approaches		Attendance	Meets		Attendance	Exceeds		Attendance	Total
	N	%	%	N	%	%	N	%	%	N	%	%	
3	24	23%	89%	36	34%	91%	37	35%	91%	9	8%	97%	106
4	42	38%	91%	29	26%	91%	34	31%	91%	5	5%	91%	110
5	38	39%	91%	33	34%	92%	24	24%	92%	3	3%	93%	98
6	31	31%	85%	29	29%	86%	35	35%	91%	6	6%	91%	101
7	45	44%	86%	25	24%	90%	24	23%	88%	9	9%	93%	103
8	54	54%	82%	19	19%	88%	22	22%	85%	5	5%	93%	100
10	25	40%	79%	12	19%	89%	25	40%	91%	1	2%	95%	63
11	20	56%	82%	9	25%	80%	7	19%	85%	0	0%		36
12	10	71%	81%	3	21%	86%	1	7%	95%	0	0%		14
Total	289	40%	86%	195	27%	89%	209	29%	90%	38	5%	93%	731



POVERTY AND EDUCATION

- In 2011, the PYT's high school graduation rate was 66% compared to 87% in Pima County. (40% 2000)
- "Drop Out Factories"
 - Desert View HS (40%), Sunnyside HS (50%), Pueblo Magnet (54%)
 - Cholla Magnet graduated 60% or less of freshman class
- Total AZ graduation rate for Native students: 55%
- Only 33% of Native American graduates are eligible for admission to the University of Arizona.

READING, MATH, AND LANGUAGE GED LEVELS JAN.-JUNE 2013



HEALTH ON THE RESERVATION

- Average life expectancy on the reservation
 - 49 years old for Yaqui males
 - 58 years old for Yaqui females
- Average life expectancy in Pima County:
 - Males: 75.8, so about 76 years old
 - Females: 81.7, so about 82 years old
- Average Age of death in Arizona:
 - General population: 72 years old
 - American Indian population: 55 years old

HEALTH ON THE RESERVATION

- Major causes for low life expectancy on the reservation:
 - Substance abuse, Cirrhosis, Diabetes, Cancer
- 33% of Indians in Southern Arizona have Diabetes.
- Pima Indians are 36 years old when they get Diabetes compared to Caucasians who get it when they are 60 years old.
- American Indians in Arizona ranked poorly on measures of maternal lifestyle and health as well as in the utilization of prenatal care.

Impoverished mothers get pregnant; teen mom may have low educational attainment, low-wage job; likely to remain impoverished.

Impoverished children are 7x more likely to be abused and/or neglected. Single mom's children may be removed.

Kids in CW system are more likely to have contact with JV criminal system; males are 2x as likely to be arrested after 18.

Girls who have lived with an addict, are exposed to DV or have an incarcerated parent are 90% more likely to get pregnant. Most girls in CW system experience at least 1 if not all 3.

15% of moms who were in the CW system as children are now CW-involved parents and have had their children removed from their care.

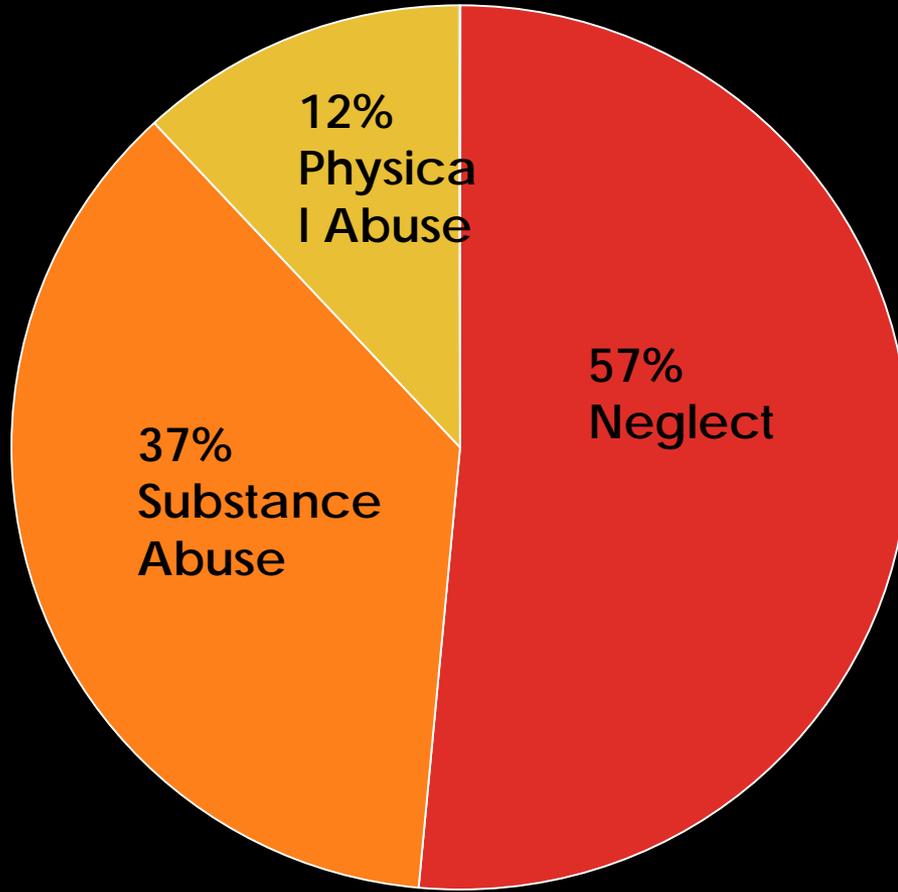
Adult males & females may not complete HS, become addicted to substances, get incarcerated, commit acts of DV and abuse.

Female children in CW system may not finish HS, have a low-wage job, and may become single moms. Remain impoverished along with their children.

PARENTS (AT 1ST CHILD WELFARE CASE)

- Average age of Mother → 24
- Average age of Father → 33
- 89% of children removed have at least one parent involved in the PY or AZ criminal system
- 13% of cases have no putative father. No information contained within case file.
 - Thus, the 89% figure may be higher since information about criminal contact for these 13% of fathers is missing.

CW REASON FOR REMOVAL



■ Neglect (52%)

■ Substance Abuse (37%)

■ Physical Abuse (12%)

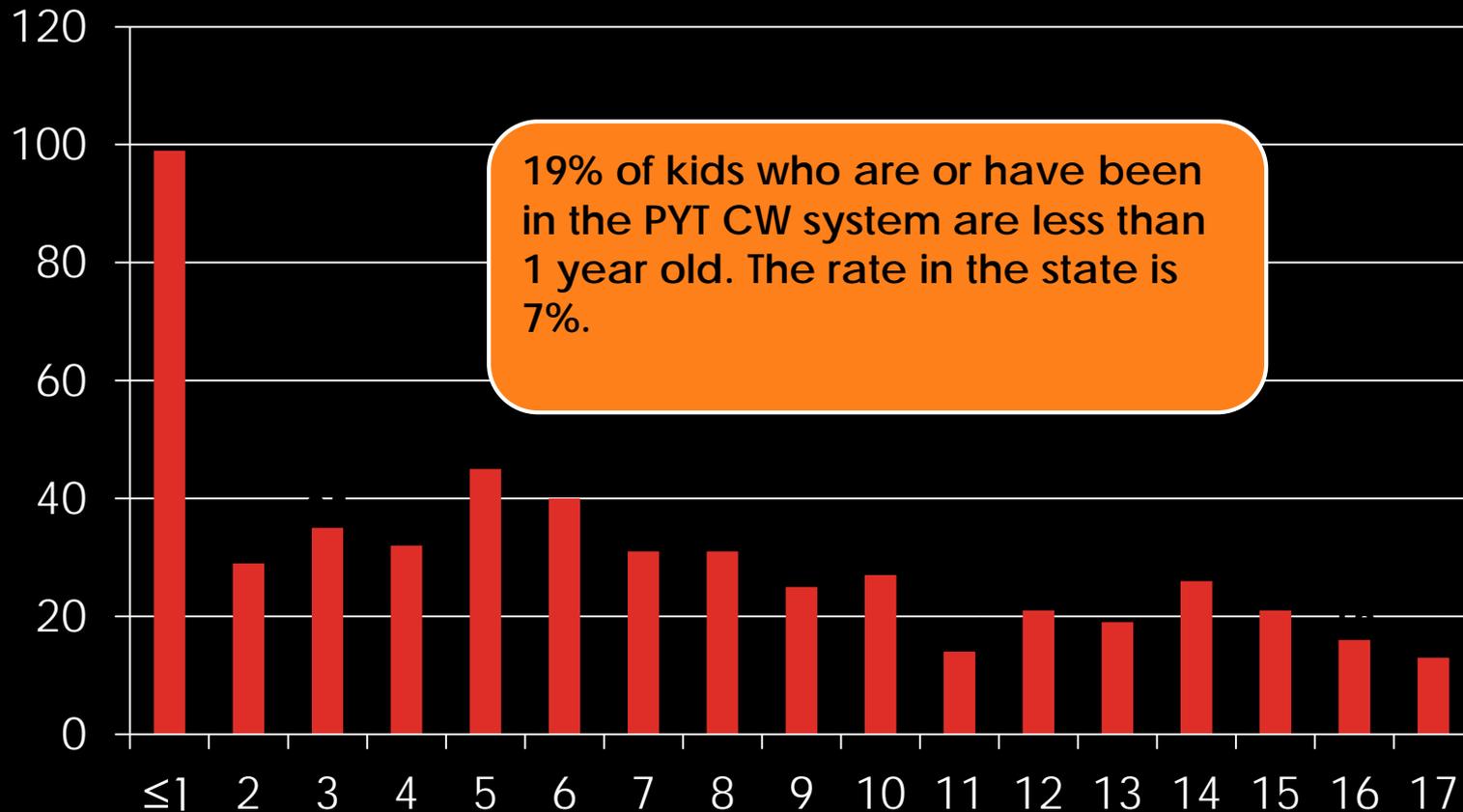
■ Sexual Abuse (.05%)

REASON FOR REMOVAL – SUBSTANCE ABUSE



Circle K's "beer cave" at Camino de Oeste / Valencia Road

AGE OF CHILD AT REMOVAL



VIOLENCE AGAINST WOMEN ACT

On February 6th 2014, the Pascua Yaqui Tribe announced implementation of a new tribal government law that enables tribal police and justice officials to investigate and prosecute certain domestic violence crimes committed by non-Indians in Indian country. Non-Indians who live or work on the reservation or have a marriage or dating relationship with a Native person may now be subject to tribal jurisdiction for domestic and dating violence crimes and criminal violations of certain protection orders. Individuals who commit these crimes in Indian country can be arrested by tribal police, prosecuted in tribal court, and sentenced to prison.

"Our judicial system, like all other judicial systems, will now have the opportunity to address offenders for wrongs committed against our most vulnerable community members. We no longer have to simply stand by and watch our native women be victimized with no recourse."

Peter Yucupicio, tribal Chairman, Pascua Yaqui Tribe— L.A. Times, February 6, 2014



CRIMINAL JURISDICTION IN INDIAN COUNTRY



Perpetrator

Victim

Indian	Indian
Indian	non-Indian
non-Indian	Indian
non-Indian	non-Indian
non-Indian	Indian



TRIBAL JURISDICTION OVER CRIMES OF DOMESTIC VIOLENCE

- VAWA **restores** to tribes special domestic violence criminal jurisdiction over all persons, provided certain conditions are met

SDVCJ means criminal conduct that falls into one or more of the following categories:

- Domestic violence and dating violence that occurs in the Indian Country of the participating tribe; and
- Violations of protection orders that occur in the Indian Country of the participating tribe

- 25 U.S.C. § 1304(c)



CONDITIONS THAT MUST BE MET:

- Defendant is a non-Indian & victim is an Indian
- The defendant must possess sufficient ties to the tribe. Sufficient ties are the following:
 - Resides in the Indian Country of the participating tribe;
 - Is employed in the Indian Country of the participating tribe; or
 - Is a spouse, intimate partner, or dating partner of a member of the participating tribe or of an Indian who resides in the Indian Country of the participating tribe
- The Tribe provides defendant with certain specified rights

- 25 U.S.C. § 1304(b)(4)



WHAT RIGHTS MUST BE AFFORDED TO THE DEFENDANT?

- All applicable rights under the Indian Civil Rights Act.
- If ANY term of imprisonment is imposed, then all rights described in the Tribal Law and Order Act of 2010 (25 U.S.C. § 1302(c)).
- The right to a trial by an impartial jury that is drawn from sources that reflect a fair cross-section of the community and do not systematically exclude any distinctive group in the community, including non-Indians.
- All other rights whose protection is necessary under the U.S. Constitution in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise SDVCJ over the defendant.



- 25 U.S.C. § 1304(d)

RIGHTS OF DEFENDANTS

- The Indian tribe shall:
 1. provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the U.S. Constitution;
 2. at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the U.S. that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.

RIGHTS OF DEFENDANTS CONTINUED ...

3. require that the judge presiding over the criminal proceeding—
 - (i) has sufficient legal training to preside over criminal proceedings; and
 - (ii) is licensed to practice law in any jurisdiction in the U.S.;
4. prior to charging the defendant, make publicly available the tribe's criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges); and
5. maintain a record of the criminal proceeding, including an audio or other recording of the trial.

PASCUA YAQUI TRIBAL COURT JUDGES & COURT ADMINISTRATOR BEN CASEY



THE PROCEEDINGS

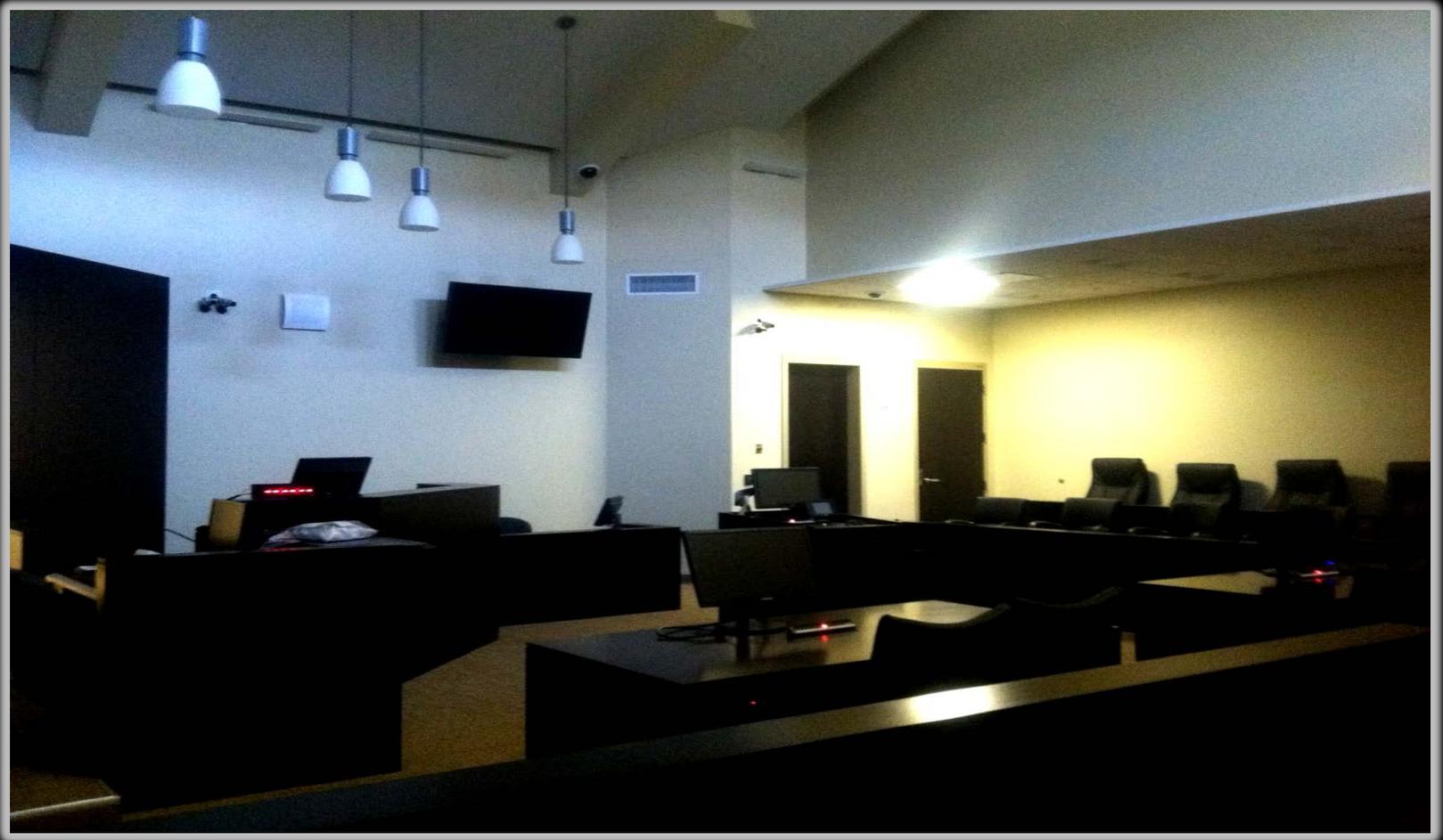
Statute

- maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

Challenges

- Does tribe have required procedures and technology in place?

STATE OF THE ART YAQUI COURTROOM



DATING VIOLENCE

Statute

- means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship
- Must occur in tribe's Indian country

Challenge

- Most of both the VAWA and TLOA provisions require changes to tribal law
- Has the Tribe made the necessary changes to its constitution? Codes? Rules of Procedure?
- Where those changes made in accordance with tribal law?

DOMESTIC VIOLENCE

Statute

- means violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the domestic- or family-violence laws of an Indian tribe that has jurisdiction over the Indian country where the violence occurs.

Challenge

- Has tribe changed its definition of DV to match VAWA? (many tribes have broader definition)
- Is the *US v. Castleman* standard satisfied? (crime of violence)

VIOLATION OF A PROTECTION ORDER

Statute

- An act that—
 - (A) occurs in the Indian country of the participating tribe; and
 - (B) violates the portion of a protection order that—
 - (i) prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;
 - (ii) was issued against the defendant;
 - (iii) is enforceable by the participating tribe; and
 - (iv) is consistent with section 2265(b) of title 18, United States Code.

Challenges

- Must be consistent with 18 USC 2265(b)
 - Court possessed jurisdiction
 - Restrained party received notice and opportunity to be heard (provisions are made for ex parte orders)
- Violation must be of provisions relating to harassment (and not things like visitation or child custody)



PYT VAWA OVERVIEW

- 18 cases since Feb. 26, 2014
 - 72 total DV cases
 - 54 total DV cases involving Indian Defendants
 - VAWA cases account for 25% of all DV cases over the last 8 months
- 15 defendants
 - Median Age: 31
 - Ages 19-50
 - 9 Hispanic offenders (1 female)
 - 3 African-American males
 - 2 Caucasian males
 - 1 Asian male
- 14 male, 1 female
- 84 law enforcement contacts pre- and post-VAWA
- 1 same-sex
- 10 violent injuries
 - Hair dragging
 - Strangulation
 - Bruising
 - Closed fist strikes to the face
- 3 defendants have re-offended post-VAWA



PYT VAWA OVERVIEW

- 13 female victims, 2 male victims
 - Median age: 30
 - Ages 19-43
 - 8 victims of dating relationships
 - 3 female victims married partners
 - 2 female parent victims
- 2 cases based on violating Orders of Protection
- 3 cases involved Orders of Protection pre- and post-arrest
- 18 children present during incident
 - Ages: Infant – 11 years old
 - Median Age: 4 years old
 - 3 resulted in open dependency

OFFENDERS (CRIMINAL HISTORY)

- Only 3 offenders did not have criminal records in the State of Arizona
- 7 of the offenders had been arrested for violent crimes, weapons, or threats (assault, threats, weapon misconduct, assaults, trespassing, and domestic violence) in the State of Arizona
- 2 offenders are Felons, both having been convicted for Burglary in the State of Arizona
- 10 of the offenders have been arrested in Arizona for cases involving drug use/possession/DUI or alcohol
- 2 offenders had active felony warrants, one out of Oklahoma for Armed Robbery
- VAWA offenders have been involved in 84 PYT Police incidents (pre/post VAWA)



PYT VAWA CASES

- The Sandwich case – CR-14-275
 - 911 anonymous caller heard a couple yelling. Police arrived and found the Victim sobbing outside. Officers learned that the Victim was pushed down on the couch and choked by Defendant. Officers also learned that the children witnessed Defendant “push mommy down”. Defendant advises that they only arguing over the Victim making his lunch incorrectly and how she does not do the laundry. Defendant eventually tries to blame the Victim by saying she pushed him first. Marks of faint finger marks are found on the Victims neck.



PYT VAWA CASES

- The Screwdriver case – CR-14-223
 - The Victim has an active Order of Protection based on a Nov. 2013 incident where the Defendant attacked her with a screwdriver to the face. This time police are called to the Victim house for allegations that Defendant spanked her teenage son. Police respond and find Defendant in the house against the O.O.P. Defendant admits knowing about the active O.O.P.



PYT VAWA CASES

- Multiple 9-1-1 case – CR-14-228
 - Victim initially calls 911 to remove Defendant from her residence because he is intoxicated. Officers remove Defendant but he returns. Defendant tries pushing the Victim down at door to get in but misses and falls to the ground. Defendant was heard shouting and yelling at Victim. Defendant stated he knows he was not allowed back there. Shortly thereafter, 9-1-1 received 41 calls within 1 hour from a 10 year old boy asking for help because mom & Defendant were fighting,



PYT VAWA CASES

- Repeat offender case – CR-14-367
 - February 2014, Defendant gets mad at the Victim's 4 year old daughter because she didn't want to take shower. The Victim hears a spank & confronts Defendant because she doesn't believe in spanking. Scared, the Victim and her daughter lock themselves in bathroom. Defendant kicks down the door causing damage. Spank marks found on little girl.
 - June 2014, Defendant and the Victim got into argument about money and it continues into the night. Defendant gets so upset he smashes a turtle aquarium against wall, punches a hole in wall, and then punches the Victim in face cutting her eye and causing swelling. Defendant admits to actions. Victim's daughter witnesses assault.

VICTOR GRACIA

NO ACTUAL PHYSICAL CONTACT / REPEAT
OFFENDER

- Hispanic.
- Five (5) police incident reports involving DV on the PYT reservation pre-VAWA.
- Two (2) police incident reports involving DV on the PYT reservation post-VAWA.
- *Defendant was highly intoxicated. Victim called PYLES to remove from premises. Defendant returned an hour later and attempted to assault the victim by punching her. Defendant was so intoxicated that when he swung to punch victim, she stepped out of the way, and he never made actual physical contact. Instead, the Defendant fell to the ground.*
- Result: The Office of the Prosecutor could not prosecute as there was no actual physical contact made by the defendant with the victim during the assault.



IVAN TANORI

VIOLATION OF AN ORDER OF PROTECTION

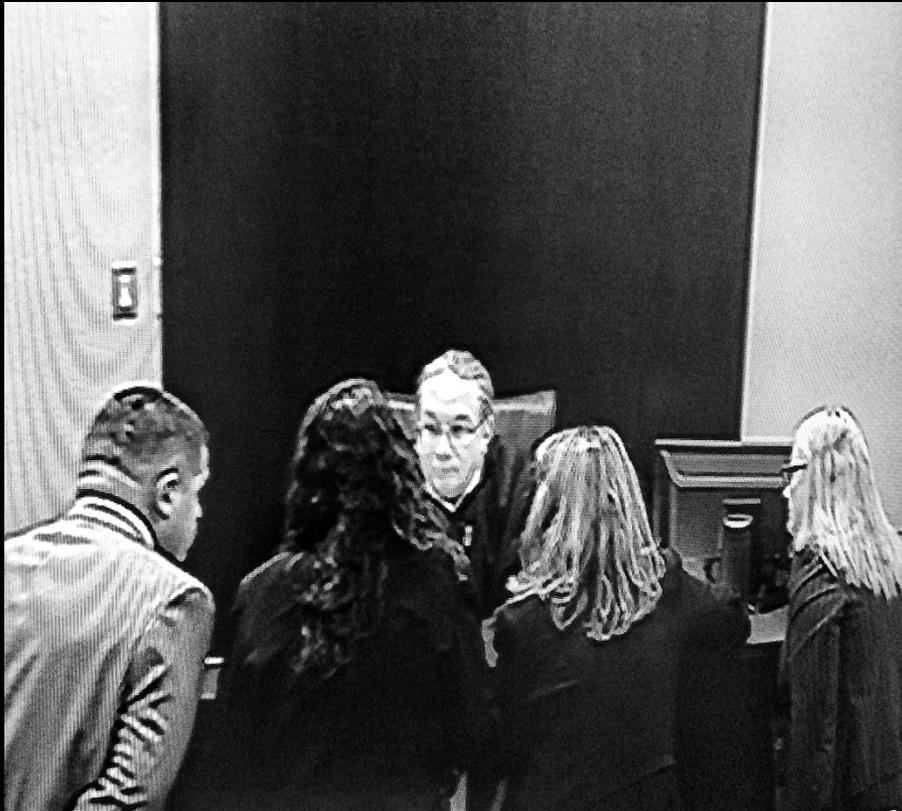


- Hispanic.
- Took place in April 2014.
- Five (5) PYLES reports pre-VAWA.
- *PYLES responded in response to a child abuse call. Upon arrival, it was found that the defendant had an Order of Protection against him by the victim. The victim acquired the Order of Protection following a Nov. 2013 (pre-VAWA) incident where he assaulted the victim in the face with a screwdriver. The couples' children were present during the assault.*
- Result: The Office of the Prosecutor declined to prosecute this case due to an unreasonable likelihood of conviction due to a lack of cooperation from the victim.
- The defendant has been indicted federally for charges based upon the Nov. 2013 assault.

OTHER DATA

- At least 8 offenders were living on the Reservation in Tribal Housing; others were staying intermittently or for a short period of time
- 10 violent injuries (hair dragging, Strangulation, Bruising, Closed fist strikes to the face)
- 7 of the incidents involved alcohol
- One incident involved a same-sex relationship
- Most of the offenders and victims appear to be unemployed
- None of the Tribal victims or defendants appear to be active cultural participants
- One Defendant, while being arrested stated, "You can't do anything to me anyway."

1ST VAWA JURY TRIAL *PYT V. GARRIS*



PYT ICWA STATS

- Pima County
- **29 open cases involving 41 children.** (2 cases opened, 2 1/2 cases closed – 2 cases were a return to a parent, 1/2 case was a guardianship with a Yaqui relative) 0 child is with a parent
- 14 children are placed with a Yaqui relative foster parent
- 5 children are placed with a non-Yaqui relative foster parent
- 6 children are placed with a non-relative Yaqui foster parent
- 11 children are placed in a non-relative, non-Yaqui foster home
- 2 children are placed in group homes, detention, or hospital
- 3 children are on run-away status
- Maricopa County
- **46 open cases involving 96 children.** (8 cases opened, 2 cases closed – both were a return to parent)
- 1 child is with a parent or guardian
- 22 children are placed with a Yaqui relative foster parent
- 20 children placed with a non-Yaqui relative foster parent
- 11 children are placed with a non-relative Yaqui foster parent
- 34 children are in a non-relative, non-Yaqui foster home
- 7 children are placed in a group home or detention
- 1 child is on run-away

PYT ICWA STATS

- California
- 1 open case involving 2 children.
- 0 child is with a parent
- 0 children are placed with a Yaqui relative foster parent
- 0 child is placed with a non-Yaqui relative foster parent
- 2 child is placed in a non-relative, non-Yaqui foster home
- 0 child is placed in a group home or detention
- Pinal County
- 2 open cases involving 5 children.
- 1 child is placed with a parent
- 4 children are placed with a Yaqui relative
- South Dakota
- 1 open case involving 1 child.
- child is with a non-Yaqui relative
- Utah
- 1 open case involving 1 child.
- 1 child is with a non-Yaqui relative
- Minnesota
- 1 open case involving 1 child.
- 1 child is in a group home

CHILDREN IN CARE

- We have **81** open ICWA cases involving **147** children.
- In Tribal Court, we currently have **55** open cases and **80** children in tribal foster care.



QUESTIONS

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