

*Tribal Court Development
-growing a tribal justice system*



Tribal Management Program

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What is Tribal Sovereignty?



Inherent Sovereignty is a recognition by the federal government that tribal authority existed prior to the formation of the US government.

-This means Tribal governments have inherent sovereignty that does not come from any other government, but rather from the people themselves.

"Indian tribes have inherent powers deriving from a sovereign status. Their claim to sovereignty long pre-dates that of our own government." -US Supreme Court in *McClanahan v. Arizona Tax Commission*

Inherent Authority of Alaska Tribes



Inherent Authority is the primary source of tribal authority for tribal governments to operate a justice system.

“Do Alaska Native villages **have inherent, non-territorial sovereignty** allowing them to resolve domestic disputes between their own members?... we hold that **Alaska Native tribes, by virtue of their inherent powers as sovereign nations, do possess that authority.**”

-Alaska Supreme Court in John v. Baker



The Pathway to Exercising Tribal Sovereignty



- Sovereign powers belong to the members (inherent sovereignty)
- Tribal members delegate some of those powers to tribal councils to exercise, through tribal constitutions.
- Tribal Councils vote on and passes Tribal Ordinances (written tribal laws).
- The Tribal Justice System enforces those laws



- Tribal Constitutions provide overall organization for tribal governments, delegates authority to the tribal council.
- Tribal Ordinances or Written Tribal Laws fill in the details and are often updated and changed. These are voted on and approved by the tribal council.
- Tribal Codes are an organized collection of tribal laws

Tribal Court Development



- Tribal Members vote on Constitutions and Tribal Councils vote to pass ordinances.
- The authority of a tribal council to pass and enforce laws comes from the Inherent Authority of the tribe, delegated from the members to the tribal council.
 - The authority comes from the tribal members

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- Since the authority to make and enforce tribal laws comes from the members, it is essential for the tribal council to work in open meetings and allow tribal members to participate at these meetings.
- Tribal Members are much more likely to respect and follow tribal laws when they had the opportunity to help create the ordinances.

Building Community Support

- In order for written tribal laws to be effective, they must be clearly written and easily understood by the Tribal Members!



Building Community Support



Some Ideas for Building Support Among Tribal Members:

- Encourage Members to attend Council meetings where tribal ordinances are being developed.
- Hold a special membership meeting to encourage attendance (dinner/doorprizes!)

Building Community Support



More Ideas for Building Support Among Tribal Members:

- Written survey, or oral survey
- Post drafts of written tribal laws in public areas.
 - But what about the youth.....?

Involving the Youth



- If you really want to be successful in working with youth, you must get them involved!
- They may not act interested, but kids really do want to know what's going on and to have a say in their lives.
 - Go to the school, give presentations.
 - Work with teachers to make thinking about this a class project.
 - Have workshops on tribal court and developing tribal laws at the school.
 - Do circles at the school.
- Make the kids a part of what's going on!

Tribal Code Development



Other ideas for increasing member participation

1. Seeking tribal member input throughout the tribal court development process is a way to encourage participation.
2. There are great resources out there available.
 - My opinion: Don't use a consultant.
 - If you do, invite tribal members to read every draft, make sure the laws are easily understood.

Tribal Code Development

- If a tribe is just beginning ordinance development, the first decision is whether to try and write an entire code first, or approach writing laws one ordinance at a time.
- Information about the subject should be gathered, including samples from other tribal and governments.



Tribal Code Development Resources



- Other Tribes
 - Local, Regional and over the Internet
- Your Youth/School
 - Internet Research, examples of laws
 - Developing laws that impact them
- AVCP/TCC
- NARF/ALS

So When do you hear your first case?



Alaska Tribal Governments have the authority under their Inherent Sovereignty to create and implement a tribal justice system.

- The United States federal government has recognized the inherent sovereignty of Indian nations to “make their own laws and to be ruled by them.” (Williams v. Lee, 358 U.S. 217, 1958.)
- Tribes do not need to have a “western” court system and tribal laws are not required to be written.

Language from Alaska Tribal Constitutions authorizing the creation of Tribal Courts



- “To provide for the maintenance of law and order and the administration of justice, including the establishment of appropriate tribal courts and other judicial bodies.”
- “The Village shall have the following powers:
To do all things for the common good which it has done or has had the right to do in the past and which are not against Federal law and such Territorial law as may apply.”

Sample language establishing a Tribal Court



- Traditionally, laws and customs of the ____ Tribe were enforced without outside intervention since time immemorial. The ____ Tribal Council has established a tribal court under the inherent sovereignty of a federally recognized Indian tribe, through sovereign powers delegated to the ____ Tribal Council to exercise under Article 9 of the Traditional Constitution of the ____ Tribe.



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