

Tribal Court Development- hearing cases in tribal court



Tribal Management Program

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Tribal Management
Program

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 custody dispute between Ms. John and Mr. Baker lies at the **core of sovereignty** -- a tribe's "inherent power to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members."

...

Northway Village has jurisdiction to hear this dispute because the right to determine custody of Indian children... "infringes on tribal self-governance."

•Alaska Supreme Court in John v Baker

Tribes clearly have jurisdiction over citizens, even in the absence of Indian Country.



Examples of **Domestic Relations** cases heard by Alaska Tribal Courts:

- Adoptions
- Child Custody
- Child Protection
- ICWA Intervention
- Marriages/Divorces
- Probate/Inheritance
- Cultural Protections
- Domestic Violence



Adoptions



Tribes in Alaska have been doing adoptions for centuries.

Tribal Courts can issue Orders of Adoption. The State of Alaska should issue a new Birth Certificate

“The Kaltag court’s adoption orders are entitled to full faith and credit, and the Bureau shall grant said status to the adoption order by issuing ...a substitute birth certificate.”

- Judge Burgess- Kaltag Case, Feb. 2008
 - The State of Alaska appealed this case to the US Supreme Court.
 - October 2010 The **US Supreme Court declined to hear the case, leaving the decision intact.**



Child Custody

Tribal courts may be asked to settle custody disputes between parents or to formalize child custody agreements between parents.

Because of *John v. Baker*, Tribes in Alaska have clear jurisdiction over custody disputes between parents of tribal children

“We hold that Alaska Native tribes, by virtue of their *inherent powers as sovereign nations*, do possess that authority...

Tribes derive the power to adjudicate internal domestic matters, including child custody disputes over tribal children, from a source of sovereignty independent of the land they occupy.” -*Alaska Supreme Court*



ICWA: The Basics



The Act requires state courts to follow three steps in ICWA cases:

1. ICWA requires a state court hearing a 'child in need of aid' custody case or an adoption case concerning a Native child, to notify the tribal government of the case.
2. The state court is required to offer the tribal government the opportunity to intervene as a party in the case. Intervening means that the tribe has the legal right to be a party to a case and give advise to the state court on placement.
3. The Tribal government can requested that the case be transferred to the tribal court, and the state court is generally required by ICWA to transfer the case to the tribal court.
 - If the case stays in State Court, ICWA imposes a **“placement preference”** that Native children should be placed into Native homes

ICWA Final Rule

25 CFR Part 23

Effective December 12, 2016



These legally binding regulations are the first of their kind since the passage of the Act in 1978

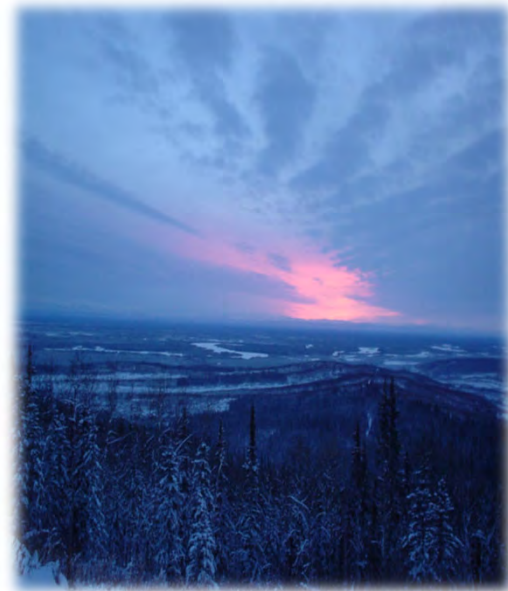
- Because many States are still not complying with ICWA



Remember:
ICWA only applies in State Court!



Tribal courts handle child protection matters, but they are not 'ICWA cases' because the ICWA law applies only to state courts.



Child Protection



“...tribes retain concurrent jurisdiction to legislate, to initiate, and to adjudicate CINA cases in tribal courts. There is nothing in ICWA that prohibits or limits tribes from passing laws that would allow the tribe to initiate CINA cases in tribal court.”

•Alaska Superior Court- Tanana Case, May 2007

•we hold that federally recognized Alaska Native tribes that have not reassumed exclusive jurisdiction under § 1918(a) still have concurrent jurisdiction to initiate ICWA-defined child custody proceedings, both inside and outside of Indian country.”

•Alaska Supreme Court 3/4/2011

Child Protection

Alaska Tribes have always been involved protecting children through tribal justice systems.

- Child protection cases are cases where children may be neglected, abandoned, or subject to physical, emotional, or sexual abuse.
- These cases usually begin with someone petitioning the tribal court about a particular child's situation.



Child Protection



The Tribal Court may decide to take the child into the legal custody of the Tribe and place the child into a safe home, or keep the child in the parents' home with certain conditions.

Conditions are set by the Tribal Court, and the Judges should work with local service providers in order to make the most of available resources.

Child protection cases can lead to placing a child in a temporary foster home. Tribes may set guidelines for certifying or licensing tribal foster homes

Ways Alaska Tribes Are Hearing Child Protection Cases: Basic Steps in a Hearing



1. Cases usually begin with a Petition to use Tribal Court or a report of harm from a mandated reporter.
2. Tribe has the responsibility to investigate allegations in petition and decide whether to hear the case.
3. The tribal court may decide to hold an emergency hearing if the child is in immediate danger or hold a regular hearing if immediate danger is not present.
4. Notice to all parties.
5. Before Hearing there should be a draft case plan and recommendations by ICWA/Tribal social worker.

Basic Steps in a Hearing, continued...



6. During Hearing testimony should be taken from parents, any witnesses and ICWA worker or other officials.
7. Judges deliberate to make decision in the best interest of the child and an order from the court is made.
8. Review Hearings scheduled to ensure parents comply with case plan and conditions.
 - Tribal court must establish a permanency goal within 6 months of taking legal custody of a child.
 - If child is removed from home, the tribe is responsible for doing a home study and background check to ensure the child is being placed into a safe home.

*In Most Cases Several Tribes can have
Jurisdiction over children:*



Tribes should have their own rules for sharing
jurisdiction over children's cases with other tribes

Tribal -State Child Welfare Compacts



State of Alaska

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Alaska Department of Health and Social Services

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Health and Social Services



Valerie Davidson
Commissioner

- > 2015 DHSS Update
- > Boards and Commissions
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- > Priorities
- > Publications
- > FY16 Operating Grants

Headlines

- > [The annual sign-up window for Medicare Part D is open](#), running Oct. 15-Dec. 7. It's a good idea to review plan options each year; Alaska's Medicare Information Office can help.
- > [Transforming Child Welfare Outcomes for Alaska Native Children, Strategic Plan 2016-2020](#) For further information about the plan and how you can become involved, please contact Christy Lawton, at 465-3191 or Christy.Lawton@alaska.gov.
- > [Watch our new TV PSA about the need for foster homes, filmed in Bethel and Eek](#)
- > [Alert: Suspending Inflation Adjustments for Medicaid Rates in SFY 2017](#)
- > [10/6/16 - The Bethel Office of Children's Services \(OCS\) office temporarily closed, staff relocated](#)
- > [7/1/16 - Senior Benefits payment changes fact sheet](#)
- > [7/1/16 - Information on State of Alaska Heating Assistance Program FY2017 budget changes.](#)
- > [7/1/16 - Public Health Nursing is experiencing some changes due to budget challenges.](#)
- > [Medicaid in Alaska Dashboard](#)

Health and Social Services

- Office of the Commissioner
- Alaska Pioneer Homes
- Behavioral Health
- Finance and Management Services
- Health Care Services
- Juvenile Justice
- Office of Children's Services
- Public Assistance
- Public Health
- Senior and Disabilities Services

Services

- Birth & Marriage Certificates
- Child Care
- Child Protection
- Denali KidCare
- Food Stamps
- Immunization Information
- Medicaid
- Public Health Centers
- Temporary "Cash" Assistance

Civil or Criminal Jurisdiction:

Tribal criminal authority in Alaska is unclear



The *Oliphant v Suquamish Tribe* case decided by the US Supreme Court in 1978 determined that tribes do not have criminal jurisdiction over non-Natives.

In 1991 US Congress amended ICRA to clarify
“Power of self-government”:

"... means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians"

25 U.S.C. §§ 1301-1304 (ICRA)

“But the powers of self-government, including the power to prescribe and enforce internal criminal laws... are not such powers as would necessarily be lost by virtue of a tribe's dependent status.”

•Alaska Supreme Court in John v. Baker 1999



To ensure that tribal laws apply equally to everyone, many Alaska Tribes exercise civil jurisdiction, and work with the State if there is a serious crime leading to incarceration.



Examples of other cases heard by Alaska Tribal Courts:



Tribal Courts exercise Powers of Self-Government by hearing civil cases protecting the **Health and Welfare** of the Tribe or Tribal members:

- Domestic Violence
- Assault/Disorderly Conduct
- Juvenile Delinquency
- Vandalism
- Misuse of Firearm
- Trespass
- Drug and Alcohol Regulation



Inherent Authority over Domestic Violence:



“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

- Alaska Tribes have inherent authority over domestic violence involving tribal members.

Additional Delegated Authority:

US Congress can “delegate” additional authority to make and enforce laws.

- The Violence Against Woman Act (VAWA) is an express delegation of authority to ensure that tribal protective orders that are enforceable throughout the United States.

- Tribes retain their inherent authority over domestic violence



VAWA:

The Violence Against Women Act requires that states and tribes recognize and enforce each others protective orders, under 'Full Faith and Credit'



- All law enforcement officers are required to enforce a Tribal Protective Order in the same way they would enforce an order issued by a Alaska state court.

Letter from AG Michael Geraghty and Commissioner Gary Folger, June 22, 2014

...the State of Alaska has recognized and enforced tribal court protection orders since at least 2008, as required by the federal Violence Against Women Act (VAWA).

...

Because the State fully recognized and enforced tribal protection orders before the amendments, it continues to fully recognize and enforce tribal protection orders now.

...

Even in those cases where a state law enforcement officer is unable to enforce a protection order by making an arrest because they do not have probable cause, the trooper should provide protection through alternatives like transporting the victim to a shelter, helping the victim contact supportive family members, or assisting with having the order filed in state court.

Furthermore, the troopers have gone above and beyond the requirements of VAWA governing full faith and credit. The troopers will attempt to deliver valid tribal protection orders to the defendants on behalf of the petitioners (victims).

Tribal Protective Orders: Enforcement



Tribes do have the authority to employ law enforcement officers.

- **Several Alaska Tribes have active Tribal Police**
- **Many city and tribal government have come together to jointly fund a Village Police department (VPO)**



Only apx.1/3 of villages in Alaska have local law enforcement.

- A Protective Order is only a piece of paper. It takes actions of people to keep people safe.

- Recognition of tribal protective orders by local air carriers is a front line of defense for victim safety.

If your Tribe has no Law Enforcement or Public Safety available, it is vital the Tribal Council, health providers, and behavioral health come together to form a Domestic Violence Strategic Response or Safety Plan.



Steps in Issuing a Tribal Protective Order:



1. Hold a full Hearing, Notifying both parties and providing Due Process. This usually begins with a Petition to use the court.
2. The Judges must make a decision that a Tribal Protective Order is necessary
3. An Order must be made and the Tribal Protective Order issued by the Court.
 - If you want help from the State with enforcement the TPO must be registered too.

Steps in Issuing an Emergency Tribal Protective Order:



- In the case of an **emergency**, the tribe can hold an emergency hearing right away, make an emergency decision, and issue an Emergency Protective Order- good for a very short time.
- A full Hearing, providing Due Process must be given before a temporary or permanent protective order can be issued.



Tribal Authority: Youth

- Tribes have inherent authority over their youth- in the same way they have inherent authority over child protection and adoption

Courts call this *in loco parentis*,
Latin for “in the place of a parent



Prevention

You can step in early, when kids really need help, before they get into real trouble.



Some Types of Cases Involving Youth



- Juvenile Delinquency
- Vandalism
- Underage Drinking
- Fighting
- School Problems
- Bullying
- Curfew



Ideas for Consequences- Not usually just punishment, but good thinking about ways to help this person be better



- Community work service:
 - Helping Elders
 - Working at a community event
 - Cleaning repairing tribal building or community hall

- Community work service can be designed to help the person build skills and self esteem, like working with a carpenter, or plumber, natural resource/lands officer.
 - Learning job skills
 - Seeing/hearing that others care
 - Connecting with the community, a mentor
 - Building self-confidence

- Restitution- Helping to repair or pay for damage done
 - Organize a fund raiser to help cover repair costs, help organize village events

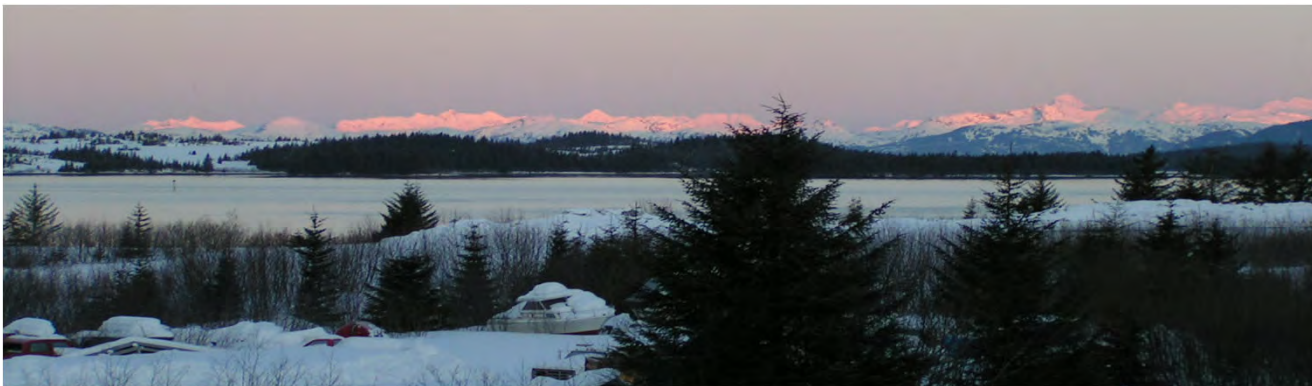
More Ideas for Consequences

- Traditional and Cultural activities
 - Skills such as hunting, fishing, preparing food, skin sewing, beading.
 - Activities like dance group or language classes
 - Spending time with Elders learning stories and history
 - Participate in talking circles
- Apologies- Oral or written apologies to victims, family, or to the whole village
- Counseling- by professional counselors, peer counseling, and Elders
- Assessments and treatment



Examples of less common cases heard by Alaska Tribal Courts:

- Contract Disputes
- Employment Disputes
- Environmental Regulation
- Natural Resource Regulation & Management
- Fish and Wildlife Regulation/Protection
- Cultural Protections





TRIBAL MANAGEMENT PROGRAM

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Quyana