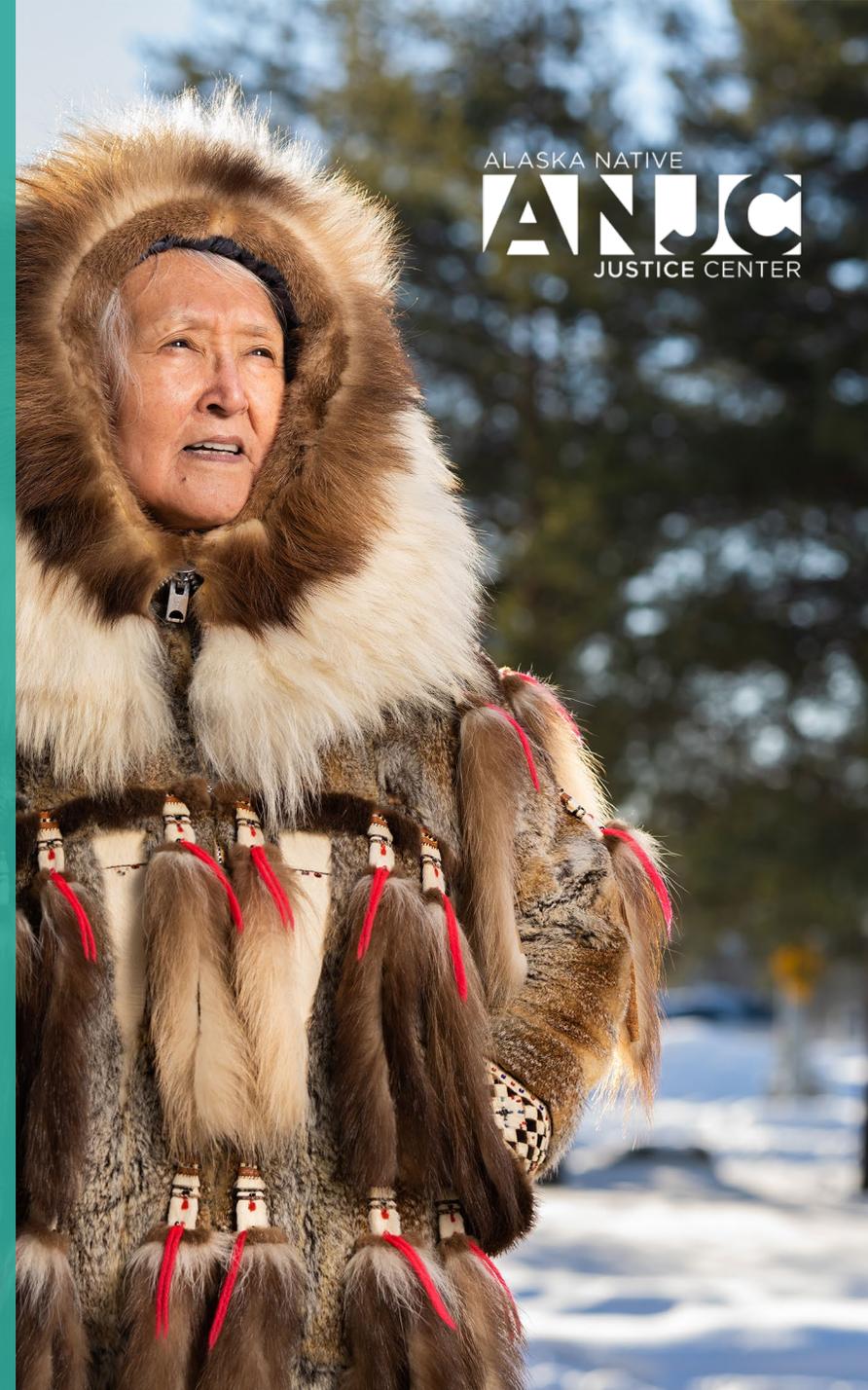


Tribal Justice, Jurisdiction, and Sovereignty



ALASKA NATIVE
ANJC
JUSTICE CENTER





Understanding Recent Changes To
Alaska's Unique Legal Landscape and
How Alaska Tribes Are Pursuing Justice
and Public Safety In Our Communities



Inherent Tribal Sovereignty

- Tribal sovereignty does not derive from the United States.
- Federal law acknowledges that tribal powers stem, not from acts of Congress, but are inherent sovereign powers that have never been extinguished.
- This sovereignty predates the formation of the United States and persists unless diminished by federal law.

COHEN'S HANDBOOK OF FEDERAL INDIAN LAW,
§1.01 LexisNexis (Nell Jessup Newton ed., 2024).

Inherent Tribal Sovereignty

- 229 Tribes within what is now the State of Alaska
- Federal recognition means that the federal government acknowledges a specific group of Native people as a Tribe.
 - This acknowledgement confirms the Tribe's existence as a distinct political entity.
 - Federal recognition establishes government-to-government relationship between the United States and the Tribe.
 - It also recognizes that tribal governments are sovereign nations with the right of self-governance.

Inherent Tribal Sovereignty

Right to make laws and be governed by them

- Establish government
- Determine citizenship
- Make laws
- Administer (do) justice
- Govern; protect; and enhance the health, safety, and welfare of its citizens within jurisdiction

A photograph of a wooden log structure, possibly a fish rack, over a lake. Several pieces of salmon are hanging from the logs. The background shows a forest and a cloudy sky. A teal semi-transparent box is overlaid on the left side of the image, containing the text.

Why do Tribes exercise jurisdiction?

1. Child Welfare
2. Public Safety Crisis
3. Violence committed with no accountability harms people and community

What other reasons can you think of?

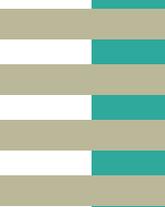
Tribal Jurisdiction Timeline

- 1958** Public Law 280 extended to “Indian country” within Alaska
- 1971** Alaska Native Claims Settlement Act (ANCSA) becomes law
- 1978** “Indian Tribes do not have inherent jurisdiction to try and punish non-Indians.” *Oliphant v. Suquamish Tribe*
- 1999** *John v. Baker* affirms Alaska Tribes’ inherent sovereignty and jurisdiction
- 2013** VAWA Reauthorization Pilot Project – *excludes* Alaska Tribes
- 2022** VAWA Reauthorization – *includes* Alaska Tribes



Public Law 280

- Public Law 230 did:
 - Allow states to exercise jurisdiction in Indian country
 - Impact federal Public Safety and Justice funding, particularly in Alaska
- Public Law 280 did not:
 - Terminate Tribes
 - Extinguish tribal sovereignty
 - Take away tribal jurisdiction



Alaska Native Claims Settlement Act (ANCSA)

What it did:

- Settled Aboriginal title claims in Alaska
- ‘Revoked’ reservations
- Impacted Alaska Tribes’ territorial jurisdiction

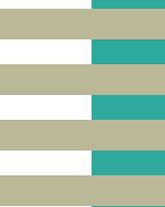
What it did not do:

- Did not terminate Tribes
- Did not extinguish Tribal sovereignty

John v. Baker

“...tribes have the ‘power to make their own substantive law in internal matters and to enforce that law in their own forums.’ Similarly, the Supreme Court has stressed that tribal sovereignty is valuable precisely because it enables Native Americans ‘to control their own internal relations, and to preserve their own unique customs and social order.”

- ALASKA SUPREME COURT IN JOHN V. BAKER, 982 P.2D 738, 761 (ALASKA 1999)



The Violence Against Women Act (2022) and Alaska Tribes

1. Defines **for the first time** the territory where Alaska Tribes' jurisdiction is recognized. Does not create “Indian country” – Alaska-specific definition of Village
2. Clarifies Alaska Tribes' authority over **Native people** within the Village
3. Pilot project available to Alaska Tribes – criminal jurisdiction over **non-Native people** that commit certain crimes within the Village

VAWA 2022

Congress recognizes and affirms the inherent authority of any Indian tribe occupying a Village to exercise criminal and civil jurisdiction over all Native people in the Village.

— 25 U.S.C. Section 1305(a)

Tribal Justice Systems Today

Adoptions	Domestic Violence
Child Protection	Trespass
Child Custody	Assault / Disorderly Conduct
ICWA Intervention	Drug & alcohol regulation
Probate / Inheritance	Juvenile Delinquency
Marriages / Divorces	Vandalism

Jurisdiction: Concurrent vs. Exclusive

The Federal Government, State of Alaska, and Tribes all have some amount of jurisdiction in Alaska villages.

- **Concurrent Jurisdiction – More than one government** may exercise jurisdiction
 - This is where most of Tribal jurisdiction falls. The Tribe and State, or two or more Tribes could assume jurisdiction (ex. child custody and protection cases)
- **Exclusive Jurisdiction – When just one government has jurisdiction** over a case
 - Internal government affairs (Tribes have exclusive jurisdiction over determining Tribal membership)

Concurrent Jurisdiction

Nothing in VAWA 2022:

1. Limits, alters, expands, or diminishes the civil or criminal jurisdiction of the US, the State, or any Indian tribe in the State;
2. Creates or eliminates any Federal or State criminal jurisdiction over a Village; or
3. Affects the authority of the US or any authority delegated by the US to the State to investigate and prosecute a criminal violation in a Village.

25 U.S.C. Section 1305(c)(2); (i)

Enforcement and Recognition of Tribal Court Orders



Full Faith and Credit

Comity

Enforcement of Tribal Court Orders

- Enforcement within the Tribe
- Enforcement outside of the Tribe
 - Full faith and credit – Tribal court order is presumptively adopted by state court unless a party objects and proves that the order was issued without proper authority, without giving the parties notice, or without allowing the parties a chance to be heard.
 - Comity – Tribal court order will be treated as a state court order unless there was some kind of fundamental unfairness with the court process.

Full Faith and Credit — ICWA

Requires state courts to give full faith and credit to tribal court orders for child protection, adoption, guardianship, and some juvenile cases.

The United States and every State, shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

25 USC 1911(d)



Full Faith and Credit - VAWA

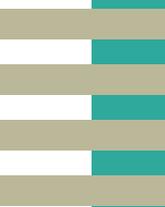
When a protective order issued by any state, tribe, or territory is violated in another jurisdiction, that jurisdiction must enforce the order as if it were its own.

(a) Full Faith and Credit. Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory as if it were the order of the enforcing State or tribe.

(b) Protection Order. A protection order issued by a state, tribal, or territorial court is consistent with this subsection if –

- **Court has Jurisdiction:** over the parties and matter under the law of such state, Indian tribe, or territory
- **Reasonable Notice And Opportunity To Be Heard:** Given to person against whom the order is sought and sufficient to protect due process.
- **Ex Parte Orders: Notice and opportunity to be heard must be:** Within the time required by state, **tribal**, or territorial law; within a reasonable time after the order is issued; sufficient to protect respondent's due process rights.

18 U.S.C. 2265(a),(b).



VAWA 2022 Pilot Project

Alaska Tribes, that meet certain standards to protect defendant's rights, can exercise special tribal criminal jurisdiction (STCJ) over certain crimes committed in their villages by non-Indian perpetrators

— 25 U.S.C. Section 1305(d)

Defendant's Rights



Indian Civil Rights Act and:

1. Free, licensed attorneys for poor defendants
2. Law-trained tribal judges (with bar membership)
3. Publicly available tribal criminal laws
4. Recorded criminal proceedings
5. Jury trials with representative jury pool
6. Informed of right to file federal habeas petitions

25 U.S.C. Sections 1302(a)(c); 1304(d).

Certain Crimes Overview

- Assault of Tribal Justice Personnel
- Child Violence
- Dating Violence
- Domestic Violence
- Obstruction of Justice
- Sexual Violence
- Sex Trafficking
- Stalking
- Violation of a Protection Order

ITWG - National

Inter-Tribal Technical Assistance Working Group

- Formed in 2013 by Department of Justice focused on Lower 48 Tribes implementing VAWA 2013
- Approximately 70 tribes
- Bi-annual meetings
- Open to all interested tribes

ITWG - Alaska

Alaska Inter-Tribal Technical Assistance Working Group

- Similar to National ITWG, but specifically for Alaska
- Alaska Tribes working together on public safety and justice
- Peer-to-peer collaboration
- Alaska-specific technical assistance
- First meeting was in April 2024 – hosted by TCC
- Second meeting was in September 2024

Track One: AK ITWG

DOJ chose the Alaska Native Justice Center to lead the AK ITWG.

Partners include:

- Tanana Chiefs Conference (TCC)
- RurAL Cap
- Alaska Native Women's Resource Center (AKNWRC)
- University of Alaska Fairbanks (UAF)
- Association of Village Council Presidents (AVCP)

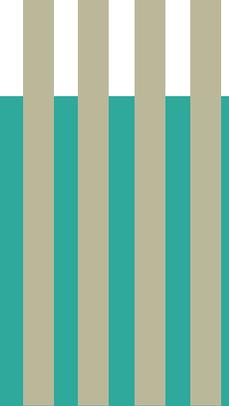
Track One: AK ITWG

- The AK ITWG is open to all interested Alaska Tribes, regardless of whether they plan to apply for the Pilot Program.
- Includes peer-to-peer information sharing and learning and members will receive targeted technical assistance.
- Tribes who wish to join the AK ITWG should submit a letter to DOJ (contact ANJC for model letter).

Track Two: AK ITWG

- Chickaloon Native Village
- Organized Village of Kake
- Craig Tribal Association
- Central Council of the Tlingit and Haida Indian Tribes of Alaska
- Native Village of Dot Lake

Questions?





Quyana - Gunalchéesh - Háw'aa - Mahsi'Choo - Baasee' - Maasee' - Dogedinh

Alaska Native Women's Resource Center

www.aknwrc.org

Phone: (907) 328-3990

Email: tribaljustice@aknwrc.org

Alaska Native Justice Center

www.anjc.org

Phone: (907) 793-3550

Email: tribaljustice@anjc.net

