THE EVOLVING LEGAL LANDSCAPE OF ALASKA TRIBAL JUSTICE

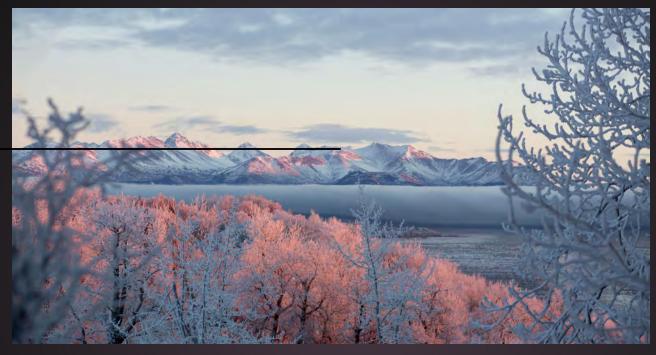
FOR THE ALASKA HOUSE TRIBAL AFFAIRS

COMMITTEE

THURSDAY, APRIL 17, 2025







INTRODUCING RICK

Rick A. Haskins-Garcia

Director of Law and Policy AKNWRC



Rick A. Haskins-Garcia, Esq., serves as the Director of Law and Policy for the Alaska Native Women's Resource Center (AKNWRC) and Judge for the Chickaloon Native Village. Rick was born in West Germany and raised in Fort Lauderdale, Florida.

Rick moved to Alaska in 2018 and has dedicated himself to serving Alaska Tribes by providing training and technical assistance to Alaska tribal courts and justice systems. Prior to joining AKNWRC, Rick served as a Tribal Justice Facilitator with the Alaska Native Justice Center (ANJC) and as the Tribal Justice Director and Associate General Counsel for the Association of Village Council Presidents (AVCP) in Bethel, Alaska. Rick also had the honor of serving as the District Court Magistrate Judge for the Alaska Court System's 4th Judicial District, based in Aniak and Hooper Bay.

Rick graduated cum laude from the Southern Illinois School of Law in 2009 and received his bachelor's degree in Political Science cum laude from Florida Atlantic University in 2004. Rick has been a licensed Attorney for over fourteen years and is licensed in the state courts of Florida and Alaska and in the United States District Court for the Southern District of Florida.

INTRODUCING ALEX



ANJC



Alex Cleghorn is the Chief Operating Officer at the Alaska Native Justice Center. He directs ANJC's legal and policy agenda to further the mission of Justice for Alaska Native people and has led ANJC's growth in providing legal services and access to justice to Alaska Native people and Alaska Tribes. He provides training and technical assistance to support tribal justice initiatives.

A lawyer for over 20 years, he has primarily represented Tribes and Tribal Organizations. He also served as an Assistant Attorney General and a Special Assistant to the Alaska Attorney General, where he led and coordinated efforts to build collaborative relationships between the State and Alaska Tribes. Before returning home to Alaska, Alex represented Tribes and served as a Tribal Court judge in California for many years.

Alex is of Sugpiaq descent and reflecting Alaska's unique legal landscape he is both a tribal citizen of Tangirnaq Native Village, and a shareholder of Natives of Kodiak, Koniag Incorporated and Cook Inlet Region Inc. He is elected to serve on the Tribal Council of the Tangirnaq Native Village and as a Director of Koniag Inc. Alex is a husband and a father and lives in Anchorage with his family.

PRESENTATION ROADMAP



- ALASKA'S DOCUMENTED DANGER FOR ALASKA
 NATIVE WOMEN
- HISTORY OF TRIBAL JUSTICE IN ALASKA
- TRIBAL JUSTICE SYSTEMS AND CHANGES IN HOW THE STATE OF ALASKA HAS RECOGNIZED TRIBAL AUTHORITY AND JURISDICTION
- THE VIOLENCE AGAINST WOMEN ACT 2022 REAUTHORIZATION





ABOUT AKNWRC

Since 2015, the Alaska Native Women's Resource Center has been dedicated to strengthening local, tribal government's responses through community organizing efforts advocating for the safety of women and children in their communities and homes, especially against domestic and sexual abuse and violence.

AKNWRC board members are Alaska Native women raised in Alaska Native Villages and have over 141 years of combined experience governments, nonprofit management, domestic violence and sexual assault advocacy, and other social service experience.



Our Mission

The Alaska Native Women's Resource Center envisions our Tribal women, communities and families free from violence, healing the trauma and utilizing the wisdom of our ancestors to create effective community/Tribal responses to domestic violence, dating violence, stalking, trafficking, sexual assault, and related injustices.



ABOUT AKNWRC

AKNWRC is the only Alaska-based member of the FVPSA TTA Resource Network funded by the U.S. Department of Health and Human Services, Office of Family Violence and Prevention Services (FVPSA) through the Office of the Administration for Children and Families, and the FVSPA designated Alaska TTA provider to work collaboratively to promote practices and strategies to improve our nation's response to domestic violence and make safety and justice a priority. Members ensure that victims of domestic violence, advocates, community programs, educators, legal assistance providers, law enforcement and court personnel, health care providers, policy makers, and government leaders at the local, state, tribal, and federal levels have access to up-to-date information on best practices, policies, research, TTA, and victim resources.

AKNWRC is also the designated Alaska Native Tribal Resource Center and TTA provider responsible for focusing on the intervention and prevention of family violence, domestic violence, and dating violence by offering culturally sensitive statewide information, training, and technical assistance designed to reduce tribal disparities within Alaska Native communities.









ABOUT AKNWRC

AKNWRC collaborates with tribal, state, and national partners, including:

- •The Emmonak's Women's Shelter
- •The Yu'pik Women's Coalition
- •Healing Native Hearts Coalition
- •University of Alaska Fairbanks
- •RurAL Cap
- ·Alaska Native Justice Center
- •Association of Village Council Presidents
- •Tanana Chiefs Conference
- •The National Indigenous Women's Resource Center
- •The Indian Law Resource Center
- •The National Congress of American Indians
- •Pouhana O Nā Wāhine
- •The Alaska Network on Domestic Violence and Sexual Assault
- •The Council on Domestic Violence and Sexual Assault





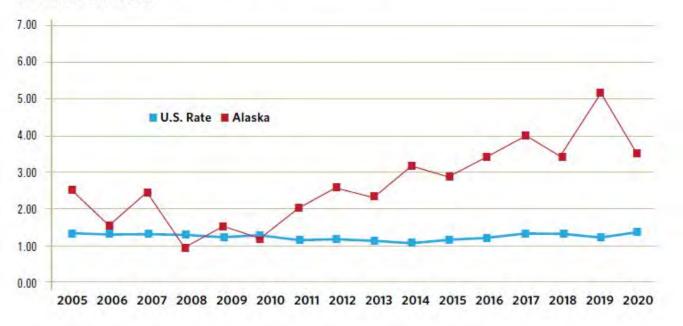






HOMICIDE OF ALASKA WOMEN

Rate of Females Murdered by Males in Single Victim/Single Offender Incidents, in Alaska and the U.S. 2005 - 2020



In 2020, Alaska had the highest homicide rate in the United States for female victims killed by male offenders in single victim/single offender incidents for the seventh year in a row. Alaska has ranked either first or second in the nation in the rate of women killed by men for 10 years in a row.



ALASKA'S RATE OF NATIVE WOMEN KILLED: 10 TIMES THAT OF WHITE WOMEN

- American Indian/Alaska Native women are disproportionally impacted by deadly violence against women in Alaska
- In 2020, the rate of American Indian/Alaska Native women killed by men in Alaska was 12.63 per 100,000 women, which is more than three and a half times the rate for all women in Alaska, and 10 times the rate for white women in Alaska
- The crisis of deadly violence against women in Alaska, particularly against American Indian/Alaska Native women, should be a top priority for lawmakers in the state



NIJ'S STUDY RESULTS...THE SHOCKING STATISTICS

Violence against American Indian and Alaska Native Women and Men...

- More than 4 in 5 Al/AN women (84.3 percent) have experienced violence in their lifetimes
- Of that 84.3 percent:
 - 56.1 percent have experienced sexual violence
 - 55.5 percent have experienced physical violence by an intimate parnter
 - 48.8 percent have experienced stalking
 - 66.4 percent have experienced psychological aggression by an intimate parnter

Overall, more than 1.5 million American Indian and Alaska Native women have experienced violence in their lifetime...

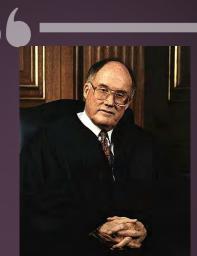
THE OLIPHANT DECISION

1978 U.S. Supreme Court decision that found Indian Tribes do not have criminal adjudicatory jurisdiction over non-natives

- Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978)

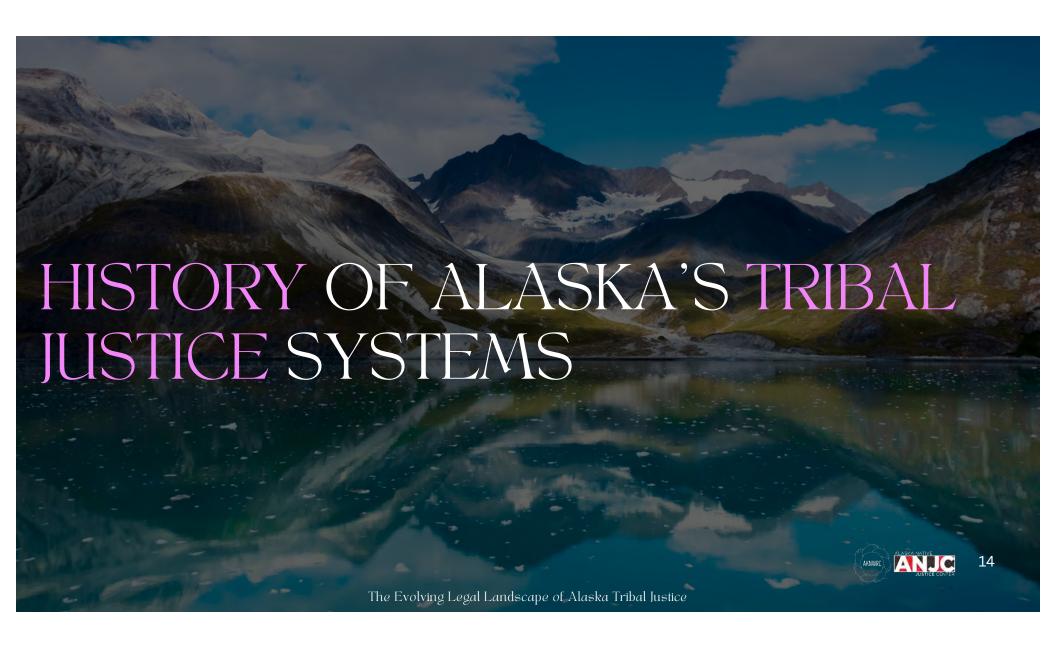
After Oliphant:

- Infrequent prosecutions by federal and state authorities within jurisdiction
- High rates of violent crimes committed by non-Indian offenders with no accountability
- In Alaska, the State has not been able to provide consistent public safety services off the road system



"...Indians do not have criminal jurisdiction over non-Indians absent affirmative delegation of such power by Congress"





TRADITIONAL JUSTICE SYSTEMS

(PRIOR TO RUSSIAN/AMERICAN CONTACT)

"The men talked to that person, and the object was to retrain the man how to treat his wife, to show respect. If they were repeat abusers, if they didn't learn their lesson, then they'd be told to pack up like, extra clothing, hunting gear, and food and told to go out into the wilderness, the tundra, and survive the experience of living alone. When the men checked him, he was allowed to come back into the village and allowed to go back to his wife, instead of being punished like they are taken into jail today, fined, and all that. They were not actual council members, but everybody, all the men, were involved in this problem."

-Rose Borkowski, late Yup'ik Elder from Alaska Native Women: Ending the Violence, Reclaiming a Sacred Status by AKNWRC





TRADITIONAL JUSTICE SYSTEMS

(PRIOR TO RUSSIAN/AMERICAN CONTACT)

Prior to foreign interference and colonization, traditional justice systems:

- •Were governed by family and clan relationships
- ·Varied by culture and region
- •Women were uplifted and held sacred
- •Matrilineal society matriliny
- •Focused on accepting responsibility, correcting wrongdoing, and restoring balance in the community



from McCord Museum, Montreal, Canada



INFLUENCE OF RUSSIAN CONTACT (1784-1867)



from Yale University Press

Eight Decades of Colonization

- •Russian dominated indigenous lands and peoples of Alaska for more than eight decades (or just under three generations)
- •Russians came in search of sea otters initially impacting mostly coastal villages
- •Russian impact grew and established fur-trade centers in many areas

INFLUENCE OF RUSSIAN CONTACT

(1784 - 1867)

1867 purchase of Alaska and the Treaty of Cession

- •On March 30,1867, the United States purchased Alaska from Russia
- •\$7.2M about 2 cents per acre
- •Alaska native villages were not consulted, and lands were not exchanged through treaties

The purchase included Alaska Native peoples, without their consent



INFLUENCE OF U.S. CONTACT (1867-PRESENT)

After the United States purchased Alaska from Russian, it began imposing American systems and policies on Alaska tribes

- •Established US federal courts in the territory
- •Represented a loss of land for tribes
- •Created a separate education system for Alaska Native children – leading to missionary and boarding schools
- •Shifted land ownership from the collective towards the individual



The First Territorial House of Representatives. 1913 from the Alaska State Library



POST-STATEHOOD

Post-Statehood:

- •State Magistrates were put forward to assume judicial role
- •City councils formed in many villages
- •Many State resources went to support municipal forms of government



Signing of the Alaska Statehood Act from the National Archives

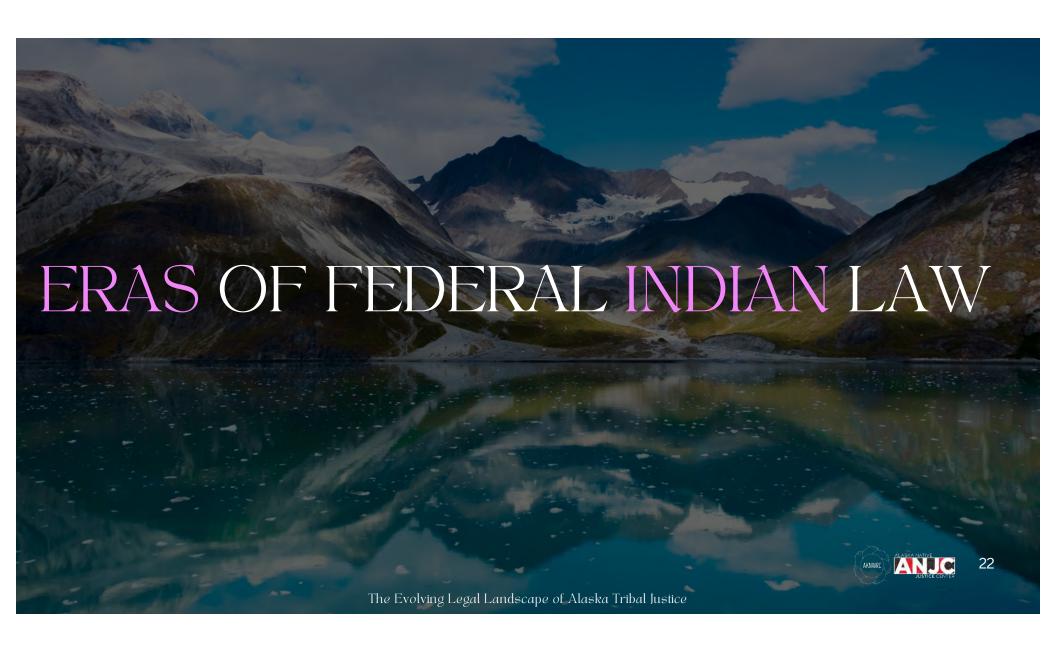


THE ATTEMPTD DESTRUCTION OF INDIGENOUS JUSTICE SYSTEMS

"Colonization severed Haida people's ties with ourselves, each other, our nation, the land and sea reflected in the disrespect for and rates of domestic and sexual violence against our women and children. Our potlatches are our ways of upholding our societal laws, and these were outlawed in Alaska in the early 1900s and in Canada during the late 1800s."

-Lisa "Ka'illjuus" Lang, Xaadas Kil Kuyaas Foundation from Alaska Native Women: Ending the Violence, Reclaiming a Sacred Status by AKNWRC





1778 -1871

TREATY-MAKING

1830-1850

REMOVAL

1850-1891

RESERVATION

1887-1934 ALLOTMENT & ASSIMILATION

1934 -1953

REORGANIZATION

1953-1968

TERMINATION

1968-1994 SELF-DETERMINATION

1994now SELF-GOVERNANCE



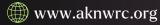
QUESTIONS?

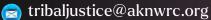


QUYANA - GUNALCHÉESH - HÁW'AA - MAHSI'CHOO - BAASEE' - MAASEE' - DOGEDINH



ALASKA NATIVE WOMEN'S RESOURCE CENTER (AKNWRC)





(907) 328-3990



ALASKA NATIVE JUSTICE CENTER (ANJC)

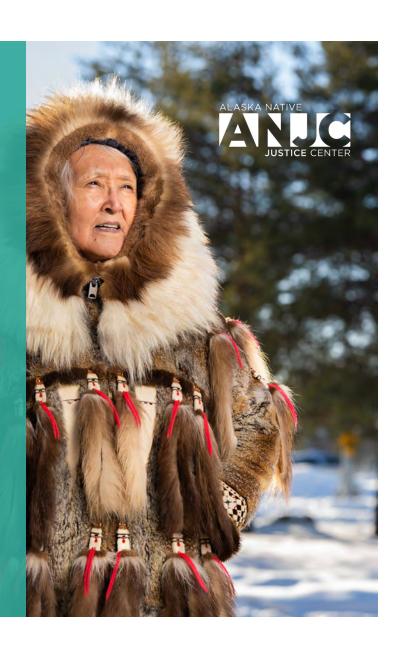
www.anjc.org



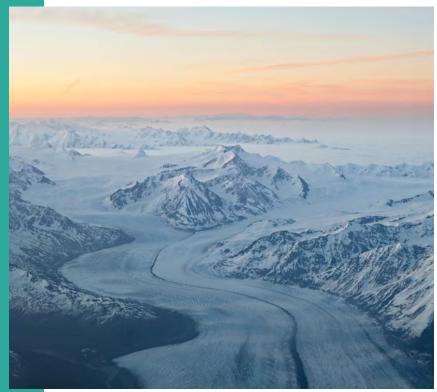
(907) 793-3550



Tribal Justice,
Jurisdiction,
and
Sovereignty



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 <u>Tribal</u> 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 governmentto-government relationship between the United States and the Tribe.
- It also recognizes that tribal governments are sovereign nations with the right of selfgovernance.

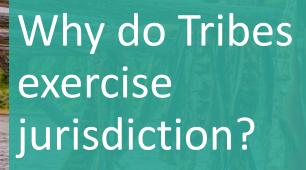


Inherent Tribal **Sovereignty**

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







- 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
- "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







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 <u>not</u> do:

- Did not terminate Tribes
- Did not extinguish Tribal sovereignty





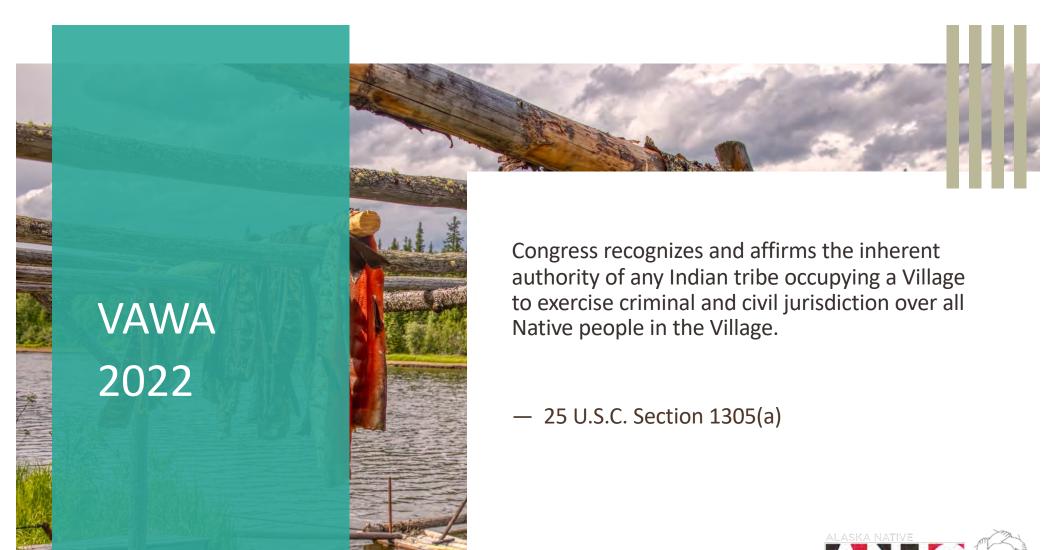
982 P.2D 738, 761 (ALASKA 1999)



The Violence Against Women Act (2022) and Alaska Tribes

- Defines <u>for the first time</u> the territory where Alaska Tribes' jurisdiction is recognized. Does not create "Indian country" – Alaska-specific definition of Village
- 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





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)







- 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).

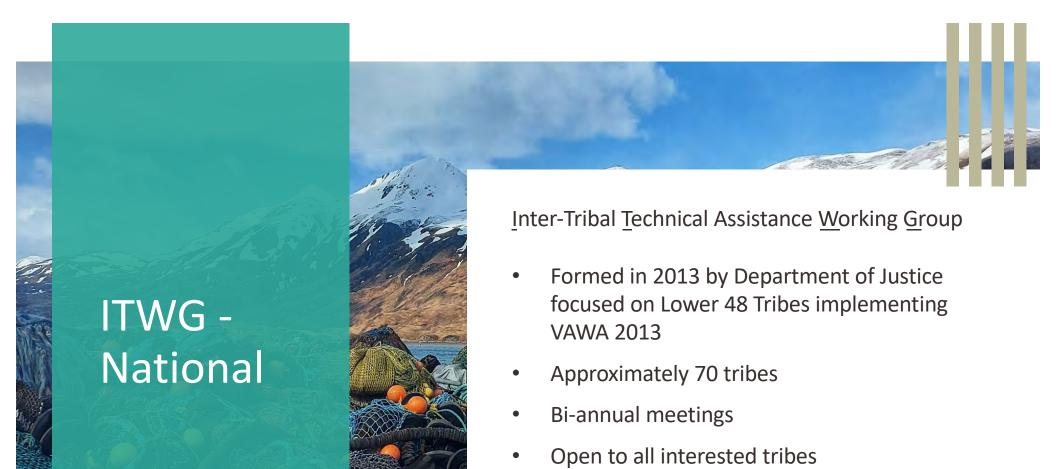






- Child Violence
- Dating Violence
- Domestic Violence
- Obstruction of Justice
- Sexual Violence
- Sex Trafficking
- Stalking
- Violation of a Protection Order









<u>A</u>laska <u>I</u>nter-Tribal <u>T</u>echnical Assistance <u>W</u>orking <u>G</u>roup

- 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

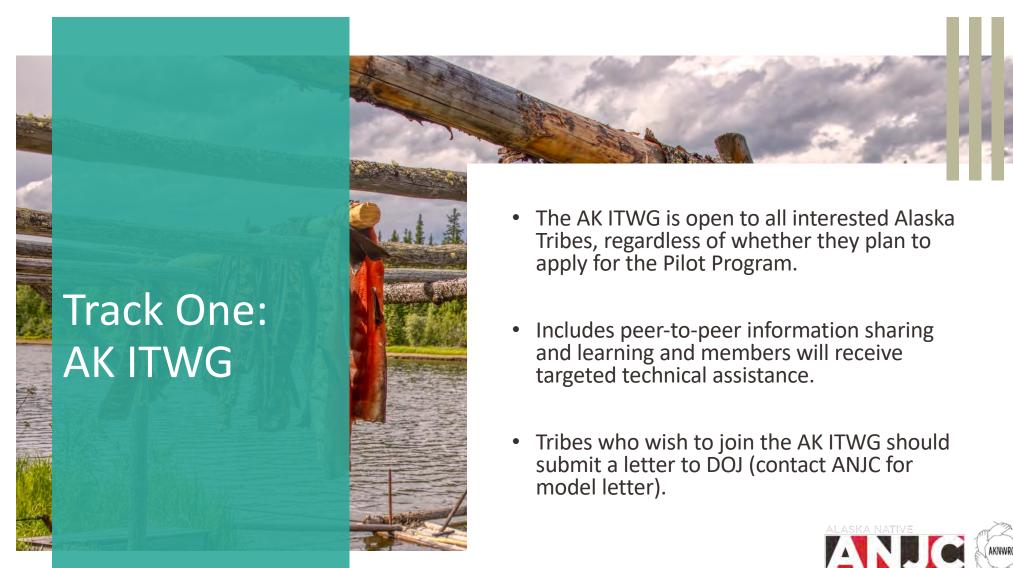


DOJ chose the Alaska Native Justice Center to lead the AK ITWG.

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)







- 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

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